

2000

Morality, law, and the needs of future persons: A study in environmental philosophy.

Anthony Italo. Fabiano
University of Windsor

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**MORALITY, LAW, AND THE NEEDS OF FUTURE PERSONS:
A STUDY IN ENVIRONMENTAL PHILOSOPHY**

by

Anthony Italo Fabiano

A Thesis

**Submitted to the College of Graduate Studies and Research
through the Department of Philosophy
in Partial Fulfillment of the Requirements
for the Degree of Master of Arts
at the University of Windsor**

Windsor, Ontario, Canada

2000

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ABSTRACT

Over the last fifty years or so, the concern for the condition of the natural environment has come within the foreground of world thought. Environmental problems, such as overpopulation, and resource depletion, have prompted philosophers, environmental activists, and policy-makers to consider the needs of future generations. Several thinkers have tried to establish a basis for considering the needs of future generations and for having a responsibility to provide for those needs. The notion of having a responsibility towards future generations has now become a moral issue.

This thesis considers the idea of granting a moral status to future persons. I review the philosophical literature and environmental legislation on future generations and try to determine whether it makes sense to say that future persons deserve moral status. The objective of this thesis is to develop a case for the moral status of future persons based on the relationship between present and future needs for survival, an idea that is evident in both moral philosophy and environmental legislation. I want to stress that the present generation has a choice to represent the needs of future persons and that such a choice can be prudentially grounded.

Per Mia Famiglia

(For My Family)

**“...Who would take it upon himself...
to abandon the *eros* which reaches out to the future!
That would be a moral skepticism, a flaccid pessimism,
a renunciation of the higher meaning and value of life.
In spite of everything, responsibility for the future
is of a provident nature and is capable of
actively determining beforehand. No scepticism
can free us from that responsibility.”**

Nicolai Hartmann, 1932

ACKNOWLEDGMENTS

I would like to thank Dr. R.H. Johnson for supervising this thesis, for carefully reading and assisting in the revisions, and for helping me grow as a scholar. I also want to thank Dr. Laura Westra for directing me to this topic and for her continuous support throughout my graduate studies. I want to thank Dr. Stephen Haller for acting as internal reader and for the many helpful discussions. Dr. Debora VanNijnatten deserves many thanks for acting as external reader and for offering valuable insight. Thanks also go out to my parents and my brothers for all their love and support and for putting up with me over the years. Last, I thank my wife, Cathy, for her patience and understanding.

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INTRODUCTION

This thesis is an attempt to deal with one of the most difficult philosophical issues in environmental ethics to surface in the past thirty years. It might be referred to as the ‘future generation problem’. It deals with the concern, consideration, and care for the people of the future. This thesis asks the question: What qualifies a person for moral status in environmental discussions? Why are the needs of future persons morally significant? and why should we care about future persons? These kinds of questions require moral deliberation. Unfortunately, the answers to these kinds of questions are not so easily spelled out. Moral philosophers have not been able to decide whether or not future persons have a present moral status.

In this thesis I review discussion of the moral status of future persons in philosophical literature, and I attempt to make a case for the moral status of future persons within environmental discussions. I examine environmental policy and legislation that deals with a concern for the future. Lastly, I attempt to develop an argument which supports the representation of the needs of future persons.

This thesis also touches on the related question of rights for future generations (or future persons). In the first chapter, I examine the common reasons that future persons cannot be said to have rights; namely because they do not exist, because they have no identity, because they are not now sentient beings, and because they are not able to claim rights or express their needs for survival. In the first chapter, I argue that these factors though necessary conditions for rights, are not necessary conditions for moral status. I maintain that moral status should be determined by

the needs that future persons will have once they exist. I develop a case for the moral status of future persons by analyzing the arguments put forth by Annette Baier, Richard De George, Joel Feinberg and Gregory Kavka. I also briefly analyze Mary Anne Warren's argument dealing with sentience. The overall aim of this first chapter is to establish a moral status for future persons within our moral discussions of the environment.

In the second chapter, I examine the status of future persons and try to highlight the legal recognition given to future persons in environmental policy and legislation. The areas that I review are protection of the environment and sustainable development. This chapter reviews Canadian law, United States law, and international legislation. It is an attempt to establish the legal recognition given to future persons by investigating each of these concepts and determining the extent to which future persons may be said to have a status in those areas. I conclude that both of these concepts support the needs of future persons.

The last chapter is an attempt to bring together the consideration given to future persons in moral philosophy and the recognition given to future persons in environmental policy and legislation. The intent of this chapter is to build a prudential case for viewing future persons as deserving of moral status which, I believe, would advocate the representation of the needs of future persons. I consult the work of Ernest Partridge, Galen Pletcher and Christopher Stone to support this view. I conclude that both morality and law suggest the view that it is better to take into account the needs of future persons and that proper recognition of and moral reflection on their future needs qualify them for present moral status.

Chapter One

Establishing a Moral Connection Among Generations

The main objective of this first chapter is to provide moral reasons for including future generations within discussions of environmental issues. I hope to show that future generations (or future persons) can be said to have moral status in environmental discussions. Throughout the chapter, I will make frequent reference to rights, since a great portion of the literature in this area considers the possibility of granting rights to future generations. There will be no attempt in this chapter to establish rights for future generations, nor do I believe, at this time, that there is sufficient justification to support granting rights to future generations. What I want to consider is the feasibility of granting a moral status to future generations in all environmental discussions directly pertaining to the quality of life.

I believe that the reasons for denying future generations a status within environmental discussions are similar to the reasons for not granting present rights to future generations. Therefore, it is necessary to carefully unpack these reasons and determine whether they are sufficient for denying future generations a status within environmental discussions. I will review two central reasons cited for denying future generations a status within environmental discussions. They are as follows:

- 1) that future generations (or future persons) do not now exist, and
- 2) that future generations (or future persons) have no present identity.

Existence and identity are treated as separate issues within the literature, and both will be considered as such in the following pages. Both of these reasons seem to negate any possibility

that future generations could be said to have present rights or that future generations could be considered in environmental rights' discussions. In the last portion of this chapter, I will briefly discuss sentience and offer a new perspective in terms of how it may be viewed as relating to future persons. Sentience requires attention because it is a necessary condition for holding rights, but I will argue that it is not a necessary condition in determining the status of future persons in environmental discussions.

Before I continue, I would like to give a brief overview of the problem at hand. Much of the recent philosophical literature concerning the environment has addressed the problem of future generations. Though there have been attempts to establish rights for future generations, (such as Galen Pletcher's formulation of a *prima facie* right for future persons, and Annette Baier's attempt to argue that future persons have moral rights), philosophers have dealt more with the issue of whether there is a responsibility towards future generations as far as the environment is concerned. For the most part, the attempts made to establish rights have been unsuccessful because future generations (or future persons) do not meet the criteria normally associated with the allocation of rights. On the other hand, attempts made to establish a responsibility to future generations have been supported by moral principles and have been given more attention in the literature because of the implications that follow from such responsibility, such as sacrificing our current consumption of resources for the benefit of future generations. In the pages to follow, I discuss moral reasons for including future persons within environmental discussions, more precisely, for granting them a status in these discussions. I believe that one of the implications that follows from a responsibility towards future persons is that we grant them a status in

environmental matters. If there is agreement that the present generation has some degree of responsibility towards future generations, then the notion of granting status to future persons is worth pursuing. My contention is that future persons have not been granted such status because the term 'status' (as it is applied to environmental discussions), is interpreted as having more to do with the criteria for rights than the necessities for human survival. In other words, the problem is that status is traditionally determined by existence and identity rather than the needs which all humans (including those yet to exist) will require for survival. I intend to reject both existence and identity as necessary conditions for granting status to future persons in environmental discussions. Though both are required for the allocation of rights, they are not, as I see it, required in order for us to assign future persons status in environmental discussions that deal with human survival and the quality of life.

Granting future persons a status in environmental discussions is a moral commitment. It requires one to evaluate whether future persons *should* be morally considered, and whether it is a responsibility to provide a suitable quality of life for those who have yet to exist. In making this decision we need to examine how the needs of the present generation are similar to the needs which future persons will require, and how our present actions will affect those persons. If there are legitimate moral reasons for affording future persons a status (*as subjects who deserve moral attention in environmental matters*), then we can make significant progress not only with regards to the decision-making process surrounding our present environmental initiatives, but with broadening the scope of our moral concern in terms of the environment. The moral reasons for granting future persons a status are as follows:

1) that present persons will probably share common needs and interests with people of the future, needs and interests which under close moral examination cannot be ignored; and

2) that future persons deserve to be considered because our present actions will affect the condition of the environment for our successors.

The arguments that I offer in this chapter are directed towards moral philosophers, particularly those who have written on the topic of future generations, or who have a keen interest in this area. This chapter is directed towards moral philosophers because they are in the best position to determine whether or not a moral status should be granted to future persons. The following pages are not directed towards policy-makers even though some might argue that the cause of environmental degradation can be linked to short-sighted environmental policies. I believe it is the task of the moral philosopher to decide on the degree to which future persons should be considered. Before I turn to a discussion on the problem of existence, it is appropriate to briefly define the terms 'future generations', or 'future persons'.

One of the problems with the issue of future generations is that there is a lack of clarity as far as defining the terms used in our discussions. I use the terms 'future generations' and 'future persons' interchangeably because a standard way of referring to those who will succeed the present generation has not yet been established. Philosophers have used 'future generations', 'future persons', 'future people' and 'future humans'. I understand future persons as those who will share roughly the same biological make-up as present humans, and who will require roughly the same needs that present humans require for survival. Future persons are those who will make up any generations that follow ours, and who will be entitled to moral rights, (as well as other rights) when they exist. If we understand future persons as people who will exist, rather than as

potential persons, then I believe we can avoid many obstacles. There is a relevant distinction made by Mary Anne Warren that serves to clarify who it is we are discussing when we refer to future persons. She writes:

“...there is a clear and crucial difference between actual but future people, i.e., those who do not yet but will exist, and present but merely potential people, i.e., things which could but will not become people in the future. The difference is that the former but not the latter will be sentient beings, with interests and desires, susceptible to pleasure and pain, and therefore possessed of moral rights.”

She goes on to say that:

“People have moral rights not because of such accidental properties as age, race, sex, or the historical period in which they exist, but because they are sentient, self-aware beings with needs and desires. If we are to protect the interests of all such beings then we cannot allow the unfortunate ambiguity in the phrase ‘potential people’ to blind us to the morally relevant differences between the real people of the future, *who lives will be affected by what we do now*, and the potential people of the present, which are not now, though they may later become, beings with moral rights.” (Warren, 271-272).

Future persons are better understood as those who will exist, as those who will be sentient beings, and as those who will have interests that can be protected at present. When future persons do become actual, they will also possess moral rights. The distinction that Warren makes assures us that future persons are morally significant at present, that it is possible to view their needs as deserving of moral attention in present environmental discussions. I will adopt Warren’s definition of future persons, although I will use ‘future persons’ and ‘future generations’ interchangeably.

Besides the lack of clarity in the terminology used to discuss future persons there is another problem. It is improper to refer to future persons as *those* who will succeed the present generation, or to say that *they* will be affected by our present action towards the environment. The language used to talk about future generations often makes it difficult to understand precisely who we are referring to. When we refer to future generations as ‘they’ or ‘them’ we proceed as if

we are talking about identifiable entities, human beings that we have knowledge of, when in fact we are referring to no one in particular. In order to make progress in this area we need to be careful of the language we use and realize that future persons are unidentifiable groups of people that we assume will exist.

Along with the difficulty in defining future persons (or future generations) and the linguistic problems that seem to surface time and again, is the difficulty in establishing a moral responsibility towards people of the future. If there is no genuine agreement among moral agents on the definition, then it seems that much more difficult to say we are responsible for providing for the needs of future persons. Ernest Partridge points out some of the problems normally associated with claiming that moral agents have a responsibility towards future persons. He writes:

- 1) "The further we project into the future, the less probability we can assign to certain events and circumstances,
- 2) We are unable to predict the course of the future,
- 3) We are unable to alter the course of the future,
- 4) Future persons are indeterminate, (that is unknowable to us as individuals),
- 5) Future persons are contingent, not actual,
- 6) We are ignorant of the needs, desires or tastes of future people, and
- 7) We are ignorant of the number of future people (and thus, for example, unable to make utility calculations regarding them). (*Responsibilities To Future Generations*, 8).

These are just some of the problems surrounding discussions regarding future generations or future persons, as I will refer to. I will try to briefly address each of these problems as we

continue, but the two most central problems (existence and identity) will be the main focus of this chapter.

I intend to proceed by examining the problem of existence from two viewpoints; those of Annette Baier and that of Richard De George. Baier's view on future persons provides the basis for arguing that future persons deserve a status in environmental discussions apart from the fact that they do not exist, while De George's view seems to deny that future persons could be said to hold such status specifically because they do not now exist. I will side with Annette Baier and argue against Richard De George.

1. Recognition of Future Persons and the Emphasis on Existence: Baier and De George

The content of this section serves to indicate that one need not exist to hold a moral status in environmental discussions. It is important to note that the emphasis on existence in the allocation of rights is one of the factors that supports the claim that future persons need not be included in environmental discussions. The view that only those who exist can have status in environmental discussions is a position that seems to follow from the view that only those who exist are eligible for rights. However, upon further investigation of rights and rights' discussions it is clear that past persons hold present rights, as we will see from Baier's analysis. If there is a relation between past persons and present rights, then existence as it is generally understood might not be a necessary condition for all rights. If that is so, then it might also not be a condition which needs to be satisfied in order to include future persons in environmental discussions.

What should determine the moral status of future persons within environmental discussions is the commonality of needs for survival among generations as well as the effect(s) that our present action towards the environment will have on future persons. When we discuss the quality of life (the air we breathe and the water we drink) there are reasons why we should include future persons. The survival needs of the present generation will not be unlike the survival needs of future generations. It may turn out that future persons require more than we need to survive but there is no reason to suggest that they will require any less. Future persons, we assume, will need air, water, and land to live. If we continue to destroy the environment and abuse the natural resources that allow for human survival, we put the lives of our successors in danger. These factors should prompt us to include future persons within our environmental discussions, to grant them status.

The problem is that we are blinded by the emphasis which is placed on existence and tend to overlook the relation between generations in terms of the needs for survival. What we have to ask ourselves is whether future persons stand in moral relation to us, if there is a moral relation between generations. When we talk about environmental rights (those dealing with the quality of life) we are talking about what humans require to survive and we should as moral agents also be talking about what we can do to preserve those rights for future persons. If there is a relation between needs of the present generation and needs of any future generations, then this will provide for a status to be given to those yet to exist.

To grant a moral status to future persons is to take their needs for survival seriously and to feel responsible for including them in any matters that we believe will affect their survival. I

maintain that moral agents should make every attempt to acknowledge future persons in environmental rights' discussions, not as necessarily deserved of present rights, but as persons who will exist and whose needs can be protected at present. For existing persons there is no alternative; our rights, (and our consideration in rights' discussions) are held in virtue of our existence, (or while we exist), and for people who no longer exist, as well as future persons who have yet to exist, rights and considerations are determined by present persons. Any rights that we assign to past persons, or that we may construct for future persons must be maintained by present persons. The problem with granting present rights to future persons is that unlike past persons who existed and who could be identified, future persons have not yet existed and have no identity. Existence is prior to identity and necessary for ascribing present rights. That much seems clear.

All of our discussions concerning rights are pointless unless we have an environment that is livable. If we do not strive to protect the resources needed for human survival then there is no basis for rights' discussions. In other words, we have a duty towards the environment which is prior to the allocation of rights. Protecting the environment is a necessary condition for rights, it is a duty which comes before all others because it ensures that our needs for survival (as well as the needs of future persons) will be met. But must future persons exist in order to be considered in discussions of rights, especially those dealing with the quality of life? Do moral agents at present need to have first-hand knowledge of future persons in order to understand why air and water quality are crucial to the people of the future? I would say no. Moral agents should be able to recognize the basic environmental necessities for human survival. The problem is that the link between existence and status is held in higher regard than the link between survival needs and

moral status. Annette Baier's account for recognizing the needs of future persons is important because it supports the idea that future persons deserve moral status despite the fact that they do not now exist. Her analysis of rights and interests supplies the groundwork for the view that survival needs are common among generations and that those needs constitute a moral relation between present and future persons. She also stresses that the needs of future persons can be expressed by moral agents and that moral agents are in a position to represent the people of the future. I turn to that account now.

1. a) Baier's position

The justification for recognizing the needs of other *future human beings* is an issue that surfaces as a result of the emphasis that is placed on existence, both in the allocation of rights, as well as the moral consideration of future persons within environmental rights' discussions. Part of Annette Baier in "*The Rights of Past and Future Persons*", attempts to establish that past persons and future persons are similar in terms of holding rights in the present. Baier adds to the notion of expressing the needs of future persons and recognizing future persons at present by calling the present generation 'spokesmen' for the people of the future (Baier, 172). Baier shows that the concept of rights involves an extension of power on the part of present persons. Where we intend to claim the rights and interests of past persons, we are acting as spokesmen, and where we intend to protect the rights and interests of future persons, we *can*, by virtue of our moral capacity, be spokesmen for future persons. She writes:

"This extension is required to make sense of the concept of rights of past or future generations. I think we already accept such an extension in empowering executors to claim the rights of the deceased whose wills they execute. The role of the executor is distinct from that of trustee for the heirs. We

recognize obligations both to and towards the legal heirs, and to the person who made the will. Where the legal heirs specified only as the issue of certain persons known to the will maker, we already accept the concept of an obligation, owed by trustees, to look after the interests of such not-yet-determinate persons.” (Baier, 172).

The interests of past persons, as she claims, are recognized by present persons in the form of ‘person-specific’, meaning that there was actually a person who existed for which we now express interests. With respect to future persons, we regard any interests that they might have as ‘general human rights’ (ibid.) Baier also adds that present persons are not simply the vehicle for expressing interests of others, past and future, but also that they are responsible for doing so. This responsibility when taken seriously is characteristic of preserving and protecting the interests of those who are not now eligible to speak them. Without emphasizing this responsibility, we fall victim to the view that existence is the only determining factor for the allocation of rights, and for determining whether one is deserving of status in rights’ discussions. Baier writes:

“The fact that future generations are not now living persons is irrelevant to the issue, if, as I have argued, we are willing to speak of the rights of those who are no longer living persons. The fact that we do not and cannot have knowledge of the special characteristics and wishes of future generations is, I have claimed, also irrelevant to the *recognition* of their rights to basic nonspecial human requirements such as uncontaminated air. Our dependence on fossil fuels may be, compared with the needs of past generations, quite special, and there may be good reason not to extrapolate that need into the distant future. But there is no reason to think that the need for air will be lessened by technological progress or regress in the future.” (Baier, 173).

According to Baier, the present generation should consider the interests of those who do not yet exist. Moral agents should be willing to acknowledge or recognize that the interests of future persons are not unlike the interests of the present generation, in terms of what is needed for survival.

Baier’s argument can be expressed in the following way:

- 1) The concept of rights entails an extension of power. When we consider the fact that

future persons (and past persons) are not empowered in the sense that they could claim rights upon us, (or that they are not empowered by any means), we must also consider the fact that we are empowered to claim rights, such as is the case with the legal treatment of wills. Baier states that in the case of wills, the executors who claim the rights of the deceased are empowered to do so, and the trustees of a particular will are expected to recognize their obligations towards the deceased. In effect, the interests are to be 'looked after' by the persons able to claim those rights. (Baier, 172). If all of this is coherent, then it follows that there is reason to suggest that we have an obligation or responsibility to past persons. Baier wants to suggest that the same approach can be taken towards future persons.

2) In the case of future persons, present persons have the power, (or moral capacity), to look after the basic interests of persons who are not determinate as past persons are, but are 'not-yet-determinate', as future persons might be viewed. (ibid.) The fact is that neither past nor future persons are capable of claiming rights from us because they do not now exist. However, this does not mean that their basic interests for human survival cannot be looked after, what it means is that we must, as moral agents, realize both past and future persons as having interests or needs which require our representation. "The fact that they (future persons) cannot now claim their rights from us puts them in a *position no different from that of past persons with rights in the present--namely a position of dependency on some representative in this generation, someone empowered to*

speak for them. (Baier, 174). The representatives which Baier is referring to are moral agents.

3) If it is true that moral agents are the representatives which future persons depend on, and those who share common needs for survival with future persons, and who are similar to the executors and trustees who represent past persons, [then there may be justification for including them within environmental rights' discussions].

Granting future persons moral status and including them within environmental rights' discussions, then, ultimately relies on moral agents. The most interesting part of Baier's analysis of rights and obligations is her attempt to establish a clear relation among past, present and future persons. She does so by identifying some features, which, she believes, show us the 'morally pertinent roles' that future persons can be said to fill. Future persons will, at some point in time, depend on some of the same resources that we presently depend on, such as air, soil, and water. They will also have a share of the 'public goods' that past generations and the present generation have created. (Baier, 181). Even more importantly, future persons are related to present persons because the actions of present persons will have an affect on the condition of the environment (positively or negatively) depending on the degree of moral attention we give to the environmental issues such as the quality of life. Baier gives an example of teacher and student to show that the moral tie we have to future persons is based on the roles that they will fill. She writes:

"My obligations as a teacher are owed to my students, whoever they may be. When I discharge obligations to them, such as ordering textbooks, I do not and need not know who these student will be. As long as I believe that determinate actual persons will fill the role of students, (as future persons

will fill the roles of present persons at some point), will occupy a position involving a moral tie to me, my obligations are real and not lessened by my ignorance of irrelevant details concerning those role-fillers. As long as we believe there will be persons *related to us as we are related to past generations, then any obligations and rights this relation engenders will be real.*" (Baier, 174).

The moral tie which we have with future persons is particularly evident when we consider the effects of our present action towards the environment and the possible consequences that future persons will be left to deal with. If moral agents can realize this moral tie among generations, we are again led to the conclusion that future persons have moral status now and should be considered.

Having set forth Baier's argument for the claim, I now investigate the objection raised by De George's position.

1. b) De George's position

The position that Richard De George puts forth seems to emphasize existence as primary in assessing whether persons are eligible for both moral rights and moral status. According to De George, the fact that future persons do not exist is enough to constitute a withdrawal of rights' discussions as they might apply to future persons. Since future persons do not now exist, De George wants to say that they should not have a status within our environmental discussions. I believe he overlooks the fact that rights must be preserved, that the rights that future persons will have require us to address and provide for future needs at present.

De George maintains that the allocation of rights and the discussions centered around rights must be based on existence. Where there is confusion as to who are the subjects of rights, or the subjects of rights' discussions, only those who exist deserve moral consideration. I will

argue that in emphasizing existence as necessary for the allocation of rights, and as necessary for being included as subjects of rights' discussions, that De George has overlooked the moral recognition of future persons that moral agents have in their capacity to utilize. De George's paper entitled "*The Environment, Rights, and Future Generations*" introduces an array of questions dealing with the supply of natural resources, such as oil. He is quick to respond that the issue of natural resources has a 'vague sense of moral uneasiness' and that proper answers to these types of questions 'are not clear'. (De George, 157). He is not prepared to suggest the proper answers to questions of such complexity, but his attitude towards future generations slowly lays itself out as he progresses. He writes:

"Future generations by definition do not now exist. They cannot now, therefore, be the *bearer or subject of anything, including rights*. Hence, they cannot be said to have rights in the same sense that presently existing entities can be said to have them. This follows from the briefest analysis of the present tense form of the verb 'to have'. To claim that what does not now exist cannot have rights in any strong sense does not deny that persons who previously existed had rights when they existed, or that persons who will exist can properly be said to have rights when they do exist, or that classes with at least one presently existing persons can and sometimes do make rights claims for past and future persons. It emphasizes, however, that in ascribing rights to persons who do not exist it is the existing person who is expressing his interests or concerns." (De George, 159).

This passage makes two points. First, since it is a fact that future persons do not exist, that it is reasonable to dismiss future persons as *having* any rights. Second, the claim that those who do not exist cannot be said to have rights does not imply that when future persons do exist, that they will not have rights. I agree with the first point. It is the second point that I want to examine more closely.

To claim that future persons will have rights when they do exist is to presuppose that some measures are taken on our behalf to ensure that those rights are protected, and that they are

available to claim for future persons when they do exist, or it would not make sense to say that they will have 'rights'. (I made this point on page 11). What I want to suggest is that one of the measures that must be taken in order to ensure that future persons will have rights once they do exist is that we recognize the basic needs for survival or for a suitable quality of life. I believe that De George may have overlooked this factor in his assertion. To say that future persons will have rights when they do exist is to suggest that some present persons take actions in order not to infringe on those rights.

In addition, the interests of future persons (as they are expressed through present persons) are another factor that justifies present discussion of future persons in environmental matters. The fact is that rights entail some responsibility or some recognition of the basic interests that other persons have or may have. If future persons are to *have* rights and interests when they do exist, then there must be a degree of responsibility placed on present rights-holders to provide for those rights and interests. Whether or not we view this responsibility as an official obligation is a question that might be determined by serious discussions regarding the environment, but to withdraw or lessen the responsibility towards future persons because they do not exist is to infringe on the rights that future persons will be entitled to. I believe that De George has unintentionally overlooked the responsibility that moral agents (and present rights-holders) have towards future persons. In order for future persons to have environmental rights, the present generation must acknowledge their *future interests*, and act responsibly towards conserving the basic resources required for human survival. I am not prepared to give a detailed outline of what constitutes responsible behaviour, other than to say that one of the most basic indications of

acting responsibly is the recognition of that which is common among generations: that being a quality of life which upholds the needs for human survival.

De George does not advocate a withdrawal from acting responsibly towards the environment, but he does claim that 'we have no responsibility for helping them (future persons) live better at great expense to ourselves'. (De George, 163). He bases this assertion on the premise that the earth does not have the resources to 'support limitless numbers of human beings'. (ibid.) Therefore, any responsibility, according to De George, must be directed towards the present generation, (or present rights-holders), rather than the rights-holders of tomorrow. He also claims that 'enlightened self-interest may well benefit mankind as a whole more than unenlightened self-sacrifice', meaning that sacrificing or assuming responsibility for future persons in terms of the environment is not grounded in moral reason. (De George, 164).

The problem with this line of reasoning is two-fold. First, we have a plausible reasons for believing that the needs for human survival will be the same for the next generation and that without preserving the resources necessary for survival, we will lessen the chance of future persons being able to claim environmental rights when they exist, not to mention the lessening the chances for their survival. Second, the recognition of these basic needs for survival does not entail that we assume a level of responsibility which would allow future persons a 'better' life; it entails that we allow future persons the means for a quality of life comparable to our own.

According to De George, it is necessary to exist in order to have rights. This is not in question. What is in question is the degree of responsibility that De George wants to place on present persons with regards to maintaining the environment for future persons, and with regard

to protecting the rights that future persons will be entitled to when they exist. In emphasizing existence as necessary for rights-allocation and rights-talk in general, De George is advocating less concern to future persons. If it is not appropriate to say that future persons have present rights, or to say that they have present needs or interests, it is at least appropriate to say that future persons will eventually have both, and that less concern for future persons and their needs will lessen the chances of future persons to claim the environmental rights that we at present hold, especially those dealing with air, water, and land.

De George's position is that future persons should neither be the subject of rights, nor the subjects of rights' discussions. To the contrary, I maintain that rights' discussions need to include future persons because our present actions towards the environment will have an effect on the condition of the environment for future persons, as well as the rights that they will be entitled to. Affording future persons present rights would entail that we have an obligation(s) as far as protecting the environment from potential harm that may result from present action. Affording future persons a status within rights' discussions may only require that we take some responsibility to *think* of the needs and interests that future persons will have once they exist. For example, examining the effects of our present over-consumption of resources may not support granting present rights to future persons, but conducting such an examination would demonstrate a concern for future persons, since our basic needs are common to theirs. By making these types of examinations a moral concern, we allow for future persons to be subjects within our environmental discussions, and we accept a moral responsibility for, at least, basic consideration of future persons. Therefore, the obligation that follows from holding a right is not

the same as the responsibility that follows from serious moral reflection regarding the needs of future persons, and the recognition of these interests constitutes including future persons within environmental rights' discussions or discussions that pertain directly to the quality of life.

Our outlook towards rights and who is entitled to them will undoubtedly be determined by existence. De George does not deny that future persons will have rights, but at the same time, he does not stress that the needs for present human survival are virtually identical to the needs required for future human survival. If existence is the only factor, or the most important factor in determining whether future persons could be said to have present rights or whether future persons can be said to be subjects in our rights' discussions, then there is no need to continue debating the future as it relates to the environment, or the people that will inhabit that environment. On the other hand, if moral agents attempt to adjust the outlook which is taken towards future persons to a *moral outlook*, then there may be reason for considering the needs of future persons as worthy of environmental concern. De George claims that future generations should not be 'the subject of anything, including rights' (De George, 159). Future persons have no present interests or needs either. What future persons *will* have is something that De George does not want to investigate from a moral standpoint. Instead, he chooses to approach future persons in terms of what they *do* have, which is nothing. Since future persons cannot have anything at present, it makes more sense to discuss what they will have, and this type of approach is moral in its scope. In discussing what future persons will have, it has already been established, that this requires both recognition of the needs of survival, as well as some degree of action on our part to allow future persons to have. Any attempt to dismiss future persons from our environmental discussions is,

therefore, also an attempt which de-emphasizes a responsibility on the part of moral agents to provide for the future, as the past generations have provided for us. It is a matter of fact that generations succeed generations, and so on. Based on this fact, we have no reason to suggest that people will not exist in the future or that people to whom we share a moral tie will be our successors.

Thus far, I have argued that existence, though a necessary condition for the allocation of rights, is not a necessary condition for granting future persons a status in environmental discussions about the quality of life. The fact that future persons have no identity, and that we are presently unaware as to who 'future persons' refers to, is the second problem which stands in the way of granting present rights to future persons, and which also negates the possibility of including future persons as subjects in our environmental discussions. Existence and identity are treated as separate issues in the literature dealing with future persons. Though we may be aware of the fact that some future persons will exist, there is no way to attribute an identity to 'them', there is no way to have knowledge of who 'they' are, in the same sense that we have knowledge of the identity of past persons. For this reason, the problem of identity and its implications in terms of including future persons within our environmental discussions need be examined. I turn to that now.

2. The Identity Problem: Feinberg and Kavka

A second line reasoning for dismissing future persons from both environmental rights' discussions and discussions directly pertaining to the quality of life deals with identity. Since it is

true that future persons have no identity at present, there is sufficient reason not include future persons within our discussions. Unlike past and present persons, future persons cannot be identified. There are no faces or names of future persons which moral agents can refer to in their discussions. All persons who have ceased to exist were once actual; all present persons are actual; and *all* future persons are potential. However, the distinction between potential and actual may only be relevant as far as assigning rights. The objective here is not to investigate the possibility of granting rights to future persons. Rather it is to show that including future persons within our environmental discussions is a moral imperative. I want to argue that dismissing future persons from environmental discussions when it is evident that the quality of life for those persons may be affected is a decision not made on moral grounds. Identity is a requirement and a necessary condition for affording rights, but it is not factor which should prevent moral agents from expressing concern for future persons, or viewing future persons as deserving of a status in our environmental discussions.

2. a) Feinberg's position

Joel Feinberg argues that the identity of future persons is of less importance than the interests that those persons *will* have. His position is that the problem of identity becomes overshadowed when moral agents consider the interests of future persons. In his article, "*The Rights of Animals and Unborn Generations*", Feinberg writes:

"The real difficulty is not that we doubt whether our decedents will ever be actual, but rather that we don't know who they will be. It is not their temporal remoteness that troubles us so much as their

indeterminacy--their present *facelessness and namelessness*." (*Responsibilities To Future Generations* Feinberg, 147-8).

What Feinberg points out is that the identity of future generations is unclear to us but that they will have interests when they exist. He adds that present persons have the power to affect any interests that future persons may have once they exist, and therefore, we may be justified in discussing their rights, (or the interference that present persons might cause as a result of not concerning themselves with future interests). "The identity of the owners of these interests is now necessarily obscure, but the fact of their interest-ownership is *crystal clear*, and that is all that is necessary to *certify the coherence of present talk about their rights*." (Feinberg, 148). For Feinberg, the interests of future persons 'cry out for protection from invasions that can take place now'. (ibid.) Even though future persons may be dismissed as holding interests at present, the fact is that their interests are characteristic of our own; future persons, like ourselves will have interests, period, full stop. Feinberg is convinced that "philosophers have not helped matters" by arguing that "future generations are not the kinds of beings who have rights now, that they don't presently qualify for membership, even auxiliary membership in our moral community". (Feinberg, 149). He wants to offer an argument for realizing the bearing that potential interests hold in the context of rights' discussions. The link between rights' discussions and discussions concerning the interests (or needs) provides the basis for the status of future persons. If, as is commonly understood, rights are correlative with interests or even share the most basic relation with each other, then this gives strength to another relation. The status of future persons ultimately depends on relations between persons in terms of interests. The interests which lie between generations are crucial in grounding the tie (the moral tie as Baier would say) which should permit such

status.

I want to propose that the problem of identity might be eliminated by emphasizing Feinberg's notion of interest-ownership coupled with Baier's notion of the moral tie to future generations. In recognizing that all persons have relatively the same needs as far as quality of life is concerned, the notion of a moral tie seems that much more clear. A moral tie among present and future generations may be realized when present interests and future interests are understood. Feinberg considers the idea that interests might be viewed as actual and eventual. Since future persons are not capable of anything at present, much less expressing their interests, we can only assume that when they are actual that they will have interests. In supposing that there will not be a major catastrophe and that generations will follow generations as they have done throughout history, our predictions that future persons will have interests is not unjustified. On the one hand, interests of future persons are both very general (or basic) and eventual. On the other hand, interests of the present persons are actual and specific. If we can view interests as differentiated in the form of general/eventual and specific/actual, then, I believe, identity holds less significance in terms of granting a status to future persons in environmental discussions. For Feinberg, interests apply to those who are capable of having them. He uses the example of a rock as having no interests due to the fact that it is never capable of expressing them, or the fact that rocks do not make the transition from potential to actual in the same sense that animals or human beings do. Rocks, he claims, 'belong to a category of entities of whom rights cannot be meaningfully predicated'. (Feinberg, 140). We must ask ourselves then: will future persons belong to a category under which rights and interests can be meaningfully predicated? Our answer must

certainly be answered in the positive because non-existing future persons will fall into a category where interests will become actual; that is, if we assume that they will come into existence.

Feinberg's analysis of the correlativity of rights and interests is set forth in the following passage:

"...that the sorts of beings who can have rights are precisely those who have (or can have) interests. I have come to this conclusion for two reasons: 1) because a right holder must be capable of being represented and it is impossible to represent a being that has no interests, and 2) because a right holder must be capable of being a beneficiary in his own person, and a being without interests is a being that is incapable of being harmed or benefited, having no good or 'sake' of its own. Thus, a being without interests has no 'behalf' to act in, and no 'sake' to act for." (Feinberg, 144).

In paying particular attention to 1) that future persons will be *capable of having interests*, (when they do exist) and that we are *capable of representing them*, and 2) that future persons are *capable* of being harmed or benefited, we are able to understand why future persons deserve a status in environmental discussions. Feinberg is not advocating the allocation of present rights to future persons. He advocates that identity need not be known in order to show that future persons will, at some point, be the bearers of rights and the holders of interests. He wants to stress that the interests that future persons *will* have are of a general nature, and that present persons represent those interests. Interests which are general include those dealing with the quality of life, (i.e. clean air, clean water, and clean land). Hence future persons are not to be out ruled in terms of rights' discussions, since it is true that they are capable of actual interests. These potential interests are enough to warrant an environmental concern for future persons, thus a status in environmental discussions.

To add strength to the argument that we do not need to know the identity of future persons to discuss or take into account their interests, we need only recall Baier's example of

teacher and student. If it is true that we share a relation with persons outside of having any knowledge of their identity, then we have no reason to suggest that this relation not have any importance as far as determining the extent to which we owe it to those others to fulfill some type of obligation or responsibility. Just as a teacher is more than often unaware as to who exactly will fill the roles of students in the upcoming school year, (and unaware of the identity of those students), moral agents are also unaware of who will fill the roles of future persons (and unaware of the identity of those future persons). Even though we cannot now know the identity of future persons, we can safely assume that those future persons will require a clean environment and a quality of life which resembles that of the present. Future persons will need clean air, just as students will require textbooks. If we agree that some teachers will be obligated to order textbooks and to prepare for their classes before they are aware of who the students will be, then we can also agree that moral agents can prepare for the needs of future persons. It might also be suggested that such preparation is required apart from our knowledge of the identity of future persons. We have an obligation to prepare for the future because we are moral agents, and in refusing to prepare we ignore the fact that future persons will have interests common to our own.

Feinberg comments on this obligation in the following passage:

"We have it in our power now to make the world a much less pleasant place for our decedents than the world we inherited from our ancestors. We can continue to proliferate in even greater numbers, using up fertile soil at an even greater rate, dumping our wastes into rivers, lakes, and oceans, cutting down our forests, and polluting the atmosphere with noxious gases. All thoughtful people agree that we ought not to do these things. Most would say that we have a duty not to do these things, meaning not merely that conservation is morally required (as opposed to morally desirable) but also that it is something due our decedents, something to be done for their sakes." (Feinberg, 147).

There may be difficulty in deciding the extent of our obligation towards future persons just as

there is difficulty in deciding how much a teacher can prepare for his future students, but the basic needs of future persons are not so difficult to predict. The point is that identity should not overshadow the needs of future persons, especially when we are aware that those needs are common to ours. The extent of our obligation will depend on the concern we have for future persons, or more appropriately, the realization that certain needs for survival are consistent among generations.

If we are correct in assuming that future persons will eventually fill roles that are related to the roles we fill, then it seems reasonable to say, following both Baier and Feinberg, that their identity is secondary in terms of importance and in terms of including future persons within environmental discussions. We might say that the interests of future persons are primary. What we have to ask ourselves is what deserves priority when we speak of future persons; interests or identity. In terms of allocating rights, identity seems to be of more importance simply because (as it is commonly understood) there needs to be a person to whom we assign a right. On the contrary, Feinberg's position is that when there is difficulty in determining whether future persons should be included in environmental discussions, considering their *future* interests, at least from a moral standpoint, should take first priority.

Gregory Kavka also holds the position that interests are of more importance than identity. He argues that we should not discount the interests of future persons because we are unaware of their identity which also supports the view that future persons deserve to hold a status in environmental discussions. I turn to that discussion next.

2. b) Kavka's position

In his article, "*The Futurity Problem*", Gregory Kavka tries to clarify why it is that interests should hold first priority as they apply to future persons. He questions the justification for 'paying less attention to' the interests of future persons. (Kavka, 111). He claims that 'the temporal location of future people is, in itself, not a reason for discounting their interests'. (ibid.) Kavka's perspective towards future persons is that their future needs qualify them for present moral consideration and require us to have a duty towards them. He argues that future persons will eventually be morally equal to ourselves. He writes:

"For we do know with a high degree of certainty the basic biological and economic needs of future generations—enough food to eat, air to breathe, space to move in, and fuel to run machines. The satisfaction of these needs will surely be a prerequisite of the satisfaction of most of the other desires and interests of future people, whatever they may be." (Kavka, 111).

The identity of future persons, though unknowable at present, is not a factor which should prevent future persons from deserving a status in our environmental discussions, that is, when we consider the commonality of basic needs which humanity requires for survival. The reason that identity should be viewed as secondary (in determining whether future persons should have a status within environmental discussions) is because interests pertaining to humanity are factors which we can know at present. Kavka introduces the notion that future needs can be known and can be promoted at present. He suggests that the basic needs of future persons can be promoted over and above our ignorance of the identity of future persons. He draws an analogy between future people and a young adult's ignorance of the desires he will have when he reaches an older age. He writes:

"It is unlikely that a young adult will know in detail the goals and desires he will have in forty years:

whether, for example, he will wish to spend his time traveling, doing volunteer work, or drinking beer. However, he can believe with a high degree of confidence that his *important needs and interests* will include good health, adequate food and shelter, and security for his loved ones. And there are definite things he can do now that will make it more likely that these needs will be met: saving or investing a portion of his income, eating properly, exercising regularly, etc. Rational prudence will advise him to do these things, despite his ignorance of the details of the desires he will have when old. Similarly, morality advises us to take steps to insure an adequate supply of resources for future generations..." (Kavka, 112).

The present generation should be more concerned with needs for survival because we are in a position to affect improve those needs or sustain those needs. Ultimately, we have the power to determine the extent of human survival altogether, so our concern should be directed towards the interests which deal with survival, as opposed to concerning ourselves with the identity of future persons, or the desires that future persons may have apart from what they require for survival.

Kavka writes:

"First, our generation could limit population growth, pollution, and the use of non-renewable resources. Second, we could make very heavy investments in research in what may be called the *survival sciences*--agriculture, population control, energy production, war prevention, etc. Third, we could develop and design institutions and organizations to *represent the interests of future generations*." (Kavka, 112).

Moral agents can understand that present activity affects future lifestyle and future human survival. What needs to be stressed is that harm and benefit are two effects that present persons may cause, and that the immediate generation will be subject to the direct effects of present actions, regardless of who they are, how many future persons there will be, or the fact that they belong to a class which is unidentifiable. As moral agents we can *identify* the interests which humans require. The basic interests of future persons are identifiable at present and this is what is required for future persons to hold a status in our environmental discussions. Environmental rights' discussions may be grounded in the recognition or identification of interests which pertain

to human survival. Those who argue that identity is necessary in order to have rights or interests must realize that future persons will have interests and that those interests can be the subject of our environmental discussions. To be morally considered requires some moral standing, and future persons have standing, at the most basic level, because the interests that they will have are relatively the same as our present interests. Of course, moral agents must also realize that human survival is a moral issue in itself, and that the very meaning of survival is not limited to the present generation. The survival of the human species includes future persons. In preserving resources or organizing programs to improve the quality of air, we contribute to the survival of mankind, an interest that all moral agents have, or should have, and in doing so we demonstrate our concern for future persons.

I have argued that it makes more sense to pursue reasons for including future persons within our environmental discussions (such as the interests that they will have) than to pursue identity as that which is required to have status in our environmental discussions. The last problem that I will briefly address deals with sentience. Some of the best literature on the concept of sentience is found in the writings of Mary Anne Warren. Sentience is related to the identity problem because it also deals with interests. It also deals with the capacity to feel pain and pleasure which future persons do not possess at present but will possess once they exist.

3. Sentience: A Brief Analysis

Warren holds the position that 'sentience is the ultimate source of all moral rights' and

that potential persons do not have 'the capacity to have experiences, and/or to prefer some experiences to others'. For these reasons, she claims that potential persons have 'no interests to be respected'. (Warren, 267). However, her definition for potential persons is quite different than her definition of future persons. She does believe that future persons will have interests that can be respected. The fact that future persons do not have the capacity to experience or to prefer some experiences to others does not constitute a dismissal of their future interests, as I have previously alluded to. Future persons cannot be assigned rights because they do not feel pain or prefer some experiences over others. The status that future persons deserve in environmental discussions is based on the interests that they *will* have rather than those that they *do* have. The interests that future persons will have can be recognized and promoted by moral agents. Warren does claim that future persons will have interests but she neglects to address *how* morality should be made to include the interests of future persons. If it is true that future persons will have interests and that moral agents can have some knowledge of the basic interests of people of the future, then it would make sense to say that those interests can be promoted at present; that those interests deserve present consideration. Warren writes:

"The view to which I refer is simply that morality is or ought to be a system designed to promote the interests of sentient beings. Which sentient beings? Ideally, all there are and all there ever will be. (ibid.)

Warren neglects to address how the ideal system should be made to include future persons who are part, we assume, of the 'all that ever will be', which she refers to. The argument that Warren responds to deals with the abortion issue which concerns potential persons rather than future generations, but the system she offers should also require a definition of sentience which is suited

to deal with future generations (future persons).

Warren does comment on the degree to which sentience can be interpreted and applied. She claims that “any degree of sentience entitles its bearer to some moral consideration”. (Warren, 268). Future persons are not bearers of sentience in any form or to any degree, but they do fall into a category where their pleasures or pain can be affected by existing moral agents, thus they should be subjects of moral consideration. The moral framework that Warren is advocating allows for future persons to be morally considered but it does not encompass the idea the future persons are the kinds of non-entities whose basic interests for the quality of life can be protected at present. Warren might claim that the abortion issue and the future generation problem are parallel to each other. For example, the drug use that affects the development of the fetus is not unlike the destruction of the environment which will affect future generations. The reason we deem the fetus as morally considerate is because its health depends on the action(s) of the mother just as the health of future persons depend on the present action towards the environment. However, Warren does not comment on this similarity. It seems for the most part that she is directing her argument towards abortion, so Warren’s analysis of moral consideration is not intended for future persons. Nonetheless, the system of morality or moral consideration that she seems to advocate can be linked with the interests of future persons. She writes:

“Morality, then, should be concerned with how happy each individual is *or will be*, not with how many individuals exist and are happy. (Being happy is not always quite the same thing as having what is in your interest, but it will do as an approximation for present purposes). ...It also means that a decision to have or not to have a child must be evaluated on the basis of its *predictable effects upon people, and possibly other sentient beings, that do or will exist, given the outcome of the decision.*” (Warren, 269).

If morality is to be concerned with how happy each individual ‘is or will be’ and sentience is

concerned with 'all there are and ever will be', then it seems acceptable to say that future persons can be granted a moral status in our environmental discussions. (ibid.) The reason I push this a step further and say that future persons should be subjects in our rights' discussions is that we will determine the rights which they are entitled to, or not entitled to, with respect to the environment. Our present conduct will either directly or indirectly affect the conditions to which they are subjected, and at present we are in a position to prevent future persons from experiencing more pain than pleasure. Warren's analysis of sentience is important because it touches on the type of moral system that will allow for future persons to be considered and because it takes into account the interests of those who are not now sentient beings, even though those interests do not warrant the allocation of moral rights. Warren's argument is one which develops a position for moral rights, but she opens the door to the position that I want to advocate; that being that future persons deserve moral status. Warren seems to suggest that future persons can be subjects of moral consideration. However, the concept of sentience altogether seems to prevent the possibility of future persons as part of rights' discussions. I prefer to view sentience as applicable to both present and future persons. What separates the two is the fact that future persons will eventually be capable of experiencing pain or pleasure, and present persons already possess such capability. Our present discussion of the future condition of the environment, the present actions towards that environment, and the interests that future persons will have, should prompt moral agents to view sentience as a term which applies to moral rights, but which does not prevent future persons from deserving moral consideration; hence their *future* interests justify their *present* status in moral discussions concerning the environment.

4. Conclusion

Throughout this chapter, I have tried to show that there are legitimate reasons for including future persons within environmental discussions, especially those dealing with the quality of life and the needs for survival. The intent of this chapter was to develop a position which supports granting a moral status to future persons within environmental discussions. There was no attempt to argue that future persons have rights. I reviewed two key objections which seem to prevent future persons from entering into present environmental discussions and offered a new approach to the concept of sentience that can also be interpreted as standing in the way of granting a status to future persons. I attempted to answer the following question: Should the fact that future persons do not exist, that they have no identity, and that they are not now sentient beings prevent moral agents from including future persons within environmental discussions? I have argued that future persons deserve moral status because they share common interests with the present generation and because our present actions will have a direct effect on them. When I say that future persons should be included in environmental discussions, I mean that their interests should stand above the fact that they do not exist and that they do not have an identity. I have maintained that the commonality of basic human needs and the ability to affect their quality of life constitute the justification for granting a status to future persons in environmental matters. To hold that future persons will have rights, interests, preferences, and a capacity to experience pain or pleasure is to also hold that present persons have some moral responsibility to provide for the future. But more importantly, that such responsibility should prompt moral agents to grant future persons a status as subjects deserving of our consideration, especially where the

needs for their survival are in question. If we agree that future persons will need clean air, water, and land, and that they are affected by our present actions, then it is morally appropriate to view them as subjects of present moral consideration in environmental discussions.

Including future persons as subjects would indicate that we have recognized the commonality of interests among generations, and have taken note of the fact that succeeding generations are environmentally affected by the actions of the present generation. One would hope that through this recognition we choose, as moral agents, to leave the next generation with a suitable environment. Ultimately, the recognition which we extend towards future persons will be the product of the degree of moral sense which we have. As Ernest Partridge writes, 'if one feels no concern for the quality of life of his successors, he is not only lacking a *moral sense* but is also seriously impoverishing his life' (Partridge, 204). The commitment made towards concerning ourselves with the future and the quality of life for our successors, is therefore, dependent on our capacity to exhibit a moral sense; in essence all progress in this area rests on this capacity. Including future persons as subjects in environmental discussions and addressing their future needs, is what I believe will exhibit this capacity. Hence while it may make sense to disallow future persons as bearers of present rights, it does not make moral sense to dismiss them from our environmental discussions.

In this chapter, I have made frequent mention of obligation and responsibility-what they consist of, why moral agents should see them as necessary, and why they apply to future persons. The next chapter will review the responsibility and/or obligation we have towards future persons, and their status from a legal, rather than moral standpoint. However, a legal approach to future

generations does have as its foundation a moral concern. I will review two concepts of environmental policy and legislation and try to determine the extent to which the present generation is responsible to future generations. As we will discover, the terms used in the legal arena involving future generations also support the claim that future generations deserve status (or consideration) in environmental matters and those matters dealing with the quality of life.

Chapter Two

On the Legal Recognition Given To Future Persons

In the previous chapter I argued that future persons deserve to have a moral status within environmental discussions. In this chapter I review some of the recent environmental legislation which addresses future persons. I focus on two concepts employed in governmental policy: protection of the environment and sustainable development. I emphasize that future persons have been recognized in both of these concepts and that the concern for future persons has now become a legal priority. I begin by providing a brief history of the concern for the future in environmental law and policy. Next, I review protection of the environment and sustainable development as they appear in Canadian law and United States law and highlight the consideration given to future persons. I also review the Brundtland Commission's report on the environment and its role in establishing recognition of future generations. In the last section of this chapter I review the concept of sustainable development as it is interpreted by the Brundtland Commission and attempt to show how the concept includes a direct concern for the needs of future generations.

1. A Brief History of the Concern for the Future in Environmental Law

There has been significant progress in environmental law over the last twenty-eight years, whereas prior to 1972, environmental law did not hold much priority at all. In fact, before 1972, 'environmental law' as a subject in itself did not even enter into the regular

programs offered at most law schools. (Benidickson, 1). Both legal training and public awareness of environmental law was difficult to access before 1972. However, when the concern for the environment did surface as a legal priority, the issue of future generations also surfaced. Over the last three decades, the concern for future generations in relation to the environment and the law has continued and has even become an international issue. Countries now make agreements with other countries for the protection of the environment, and included within these agreements is a concern for the future and the people that will inhabit that future, whether that concern is specifically addressed or whether it is specifically implied.

The concern for the environment at first glance deals with concepts that are obvious. Terms such as 'protection', 'preservation', 'conservation', 'development', and 'maintenance' though different in their application, all serve the same function: to uphold a *healthy* environment for humanity as well as all other life systems. The reason(s) we construct and uphold laws for the environment can usually be linked with one, or in some cases, all of these terms. However, even though these concepts lie at the core of most environmental laws, they do not all specifically address the future, or future generations. The concern for future generations (or future persons) arises when the term 'health' is further analyzed. Under the law, 'healthy' is meant to apply to future generations or future persons in addition to the present generation.

"Some eighteen countries now have constitutions which either expressly or impliedly have the right to a healthful environment, including several western democracies, the European socialist countries, China and a number of other countries." (*Environmental Protection in a New Constitution*, 14).

Though the right to a healthful environment is not to be interpreted as applying to those yet to exist, the term 'healthful' does, in principle, apply to people of the future. The basis for the right to a healthful environment came about through the recognition of principles in international legislation, namely those offered by the World Commission on Environment and Development (WCED) in 1987, (which is also known as the Brundtland Report, named after the Prime Minister of Norway). The report, entitled "Our Common Future" is a collective agreement of plans for environmental development that several countries participated in. All of the countries who promote the right to a healthful environment have generally used the Brundtland Commission as a basis for grounding this right. The health or well-being of humanity, according to the Brundtland Commission, is viewed in terms of present and future:

"Some necessary changes in the legal framework start from the proposition that an environment adequate for health and well-being is essential for all human beings—including future generations." (Our Common Future, 63).

The different ways of defining principles and different interpretations for every principle under the law present a problem in assessing the degree to which we may be said to have obligations to future generations. For example, a country or region may have a law or policy implemented for the protection and/or maintenance of the environment, where protection or maintenance may be interpreted as including concern for future generations or as not including future generations directly. The following examples will serve to clarify.

- 1) "to promote the betterment of the people of the whole or any part of Ontario by

providing for the protection, conservation, and wise management in Ontario of the environment." (*Ontario's Environmental Assessment Act*). (Benidickson, 3).

2) "...to develop and maintain an environmental management system in Manitoba which will ensure that the environment is maintained in such a manner as to sustain a high quality of life, including social and economic development, recreation and leisure for this *and future generations*." (*Manitoba's Environment Act*). (Benidickson, 4).

Both of the objectives in these acts serve the same approximate purpose regarding the environment. I say 'approximate' because both objectives are based on principles which are all intended to produce one result: a healthy environment. The notable difference between these objectives, for our purposes, is that the Ontario Act addresses protection as linked to 'people' (whereas this may or may not include future generations), and the Manitoba Act addresses maintenance as linked directly with present and 'future generations'.

The history of the status of future generations in environmental law is relatively short. The legislation involving future generations only dates back to the late 1960's and early 1970's. Before that time, the needs of future generations might have been considered but were not written in law. It was not until policy-makers attempted to define 'environment' that the needs of future generations became a legal issue. Borne out of the definition of 'environment' came the need for protecting the environment:

"The way the term 'environment' is interpreted or understood in legal settings is directly linked to the scope of environmental protection. Crudely stated, environmental protection legislation safeguards environment as defined in that legislation and as interpreted by the courts in the light of legal principles drawn from many different spheres." (Benidickson, 10).

The protection of the environment now seems to be the main principle which countries consider in the various types of legislation that they choose to implement. In reviewing

the legislation it is evident that future generations (or future persons) are also considered, as I will note in the following pages. Both Canadian and American legislation have adopted the idea that future generations need to be considered.

Canadian law in its pursuit to protect the environment, has divided responsibility among the federal and provincial governments. There are a number of agencies that serve to protect the environment in Canada such as the Canadian Environmental Protection Agency and the Canadian Environmental Law Association. There is also significant legislation in Canada that deals with the protection of the environment as well as the concern for future generations. Each province has their own legislation apart from the Constitution which applicable to all of the citizens of Canada. The Ontario Bill of Rights and the Yukon's Environmental Act are two examples of provincial legislation dealing with the protection of the environment.

In the United States, the protection of the environment also operates in similar fashion. The Environmental Protection Agency of the United States recognizes that the environment is of paramount concern due to the depletion of natural resources and the continuous destruction of the fundamental needs required for human survival. The United States government now sees protection of the environment as vital and as an issue of immediate concern. The United States government also sees the needs of future generations as fitting into the objective of protecting the environment.

"The body of Environmental Law is growing in response to the felt needs of society which

is beginning to acknowledge that the technological advances of this generation are destroying the legacy of the past and *squandering the capital assets of the future.*" (*Environmental Rights and Remedies*, Yannacone. et. al, 1).

The most significant progress made with regards to environmental protection as it relates to future generations has been on the international front. Though the legislation agreed upon at the international conferences on the environment is not legally binding, (as far as it applies to individual citizens) it is used in a number of countries as the basis for constructing new environmental laws. For example, Canadian law having to do with protecting the environment makes frequent reference to the Brundtland Commission. To my knowledge, the Brundtland Commission was the first to designate how exactly future generations fit into their objective for sustainable development.

"The satisfaction of human needs and aspirations is the major objective of development. The essential needs of vast numbers of people in developing countries—for food, clothing, shelter, jobs—are not being met, and beyond their basic needs these people have legitimate aspirations for an improved quality of life. A world in which poverty and inequity are endemic will always be prone to ecological and other crises. Sustainable development requires meeting the basic needs of all and extending to all the opportunity to satisfy their aspirations for a better life." (*Our Common Future*, 44).

In paying particular attention to the last part of this passage, it is safe to assume that the 'opportunity' which sustainable development seeks to provide includes future generations. If this does not indicate a clear concern for future generations and their needs, consider the following:

"At a minimum, sustainable development must not endanger the natural systems that support life on Earth: the atmosphere, the waters, the soils, and the living beings.... In essence, sustainable development is a process of change in which the exploitation of resources, the direction of investments, the orientation of technological development, and the institutional change are all in harmony and enhance both the current and future potential to meet human needs and aspirations." (*Our Common Future*, 45-6)

Thus concern for future generations can be specifically addressed, or specifically

implied in environmental law and policy. Some may even claim that future generations should not be implied from the language used in environmental law. I do not want to pursue the effects of such a claim because there is enough rational evidence to indicate that laws are at least in some sense directed towards a concern for future generations. The reason I say this is because most laws which are designed for the environment, and that have been designed in the past, are not exclusively designed for that environments' inhabitants. On the contrary, environmental laws are designed to improve the quality of life and to protect the natural resources and health of ecosystems within any particular region. The intent of most environmental laws is to protect life in the present and in the future. To claim that laws are designed exclusively for the present generation does not seem rational, since future persons when they do exist will probably be subjected to the same laws which present generations are subjected to, and who will have, at least, some of the same environmental rights that present persons are entitled to. As we will see in the next section, protection of the environment as it appears in Canadian and United States law emphasizes a general concern for life, and it is clear that 'protection' is meant to apply to future generations in addition to the present generation.

2. Protection of the Environment

A. Canadian Law

One of the central reasons for implementing environmental laws is to protect individuals from environmental harm, which in turn has an effect on the quality of life and on human survival. The *Ontario Bill of Rights* (1993) identifies as one of its main

objectives to *protect* 'the inherent value of the natural environment and the people's right to a healthful environment'. (Benidickson, 46). This objective when further analyzed seems to indicate some degree of concern for those not yet existing. If the inherent value of the natural environment is to be protected, then one might ask: For whom is the natural environment to be protected? The answer can properly be said to include future persons, in addition to present persons, (as well as all other living species). Future persons *will* have environmental rights and these rights are recognized by Canadian law at present. For example, in 1992, the province of Saskatchewan 'initiated discussion on legislation concerning a *Charter of Environmental Rights and Responsibilities*.' It affirmed that 'the health and integrity of the environment is of paramount concern to Saskatchewan residents' and that 'the health and integrity of the environment must be sustained for the benefit of present and future generations of Saskatchewan citizens'. (Benidickson, 46). Promoting the right to a healthful environment involves protecting that right for future generations, or not interfering with their access to that right. In harming the environment, for example, in terms of air quality, we put others at risk and we most certainly put future persons at risk.

Protection of the environment requires that human beings refrain from the destruction or degradation of the natural environment. The main reason for protecting the environment is that human health and the health of all other living organisms, (as well as the health of all future persons) is affected by our present actions towards the environment. Since humans are aware of their actions, and aware of the possible effects of

their actions, protection is or should be a priority. In fact, most of the present environmental research acknowledges human activity as the main cause in the continuous destruction of the environment. The *Great Lakes Water Quality Agreement* of 1972 states in all of its objectives that 'human activity' is directly linked to the decrease in water quality. The objectives presented for the improvement of water quality stated that the water was to be made:

- “(a) Free from substances that enter the waters as a result of *human activity* and that will settle to form putrescent or otherwise objectionable sludge deposits, or that will adversely affect aquatic life or waterfowl;
- (b) Free from floating debris, oil, scum, and other floating materials entering the waters as a result of *human activity* in amounts sufficient to be unsightly or deleterious;
- (c) Free from materials entering the waters as a result of *human activity* producing colour, odour or other conditions in such a degree as to create a nuisance;
- (d) Free from substances entering the waters as a result of *human activity* in concentrations that are toxic or harmful to human, animal or aquatic life;
- (e) Free from nutrients entering the waters as a result of *human activity* in concentrations that create nuisance growths of aquatic weeds and algae.” (*Great Lakes Water Quality Agreement*, 15 April 1972, T.I.A.S. No. 7312 [GLWQA]).

It is obvious that present human activity towards the environment will affect the quality of life for future persons and that there is general agreement as to present action being the cause of future effects. However, what is less obvious is the degree to which the present generation is *obligated*, under the law, as far as protecting the environment for future generations.

A great portion of the existing laws pertaining to the environment are imposed upon companies, corporations, or groups that have an overwhelming power to abuse the natural environment. Companies and corporations are expected to follow the laws and

regulations and are usually assessed penalties according to the level of environmental damage which they can or do produce. Environmental assessments are often conducted by private environmental consulting firms and have more recently been conducted by the management of some major corporations. Environmental laws for companies and corporations are regulated by the federal and provincial governments. In Canada, the Canadian Environmental Protection Act (CEPA) was designed to deal with the toxic substances produced by corporations and the increasing levels of pollution. It states that 'the protection of the environment is essential to the well-being of Canada'. (R.S.C. 1985 (4th Supp.), c. 16 [CEPA].). The 'well-being of Canada' is understood as including both present and future generations. This is particularly evident in the definition of toxic substances. The CEPA reads:

"A substance is toxic if its entry to the environment takes place in a quantity or concentration or under conditions:
a) having or that may have an immediate *or long-term* harmful effect on the environment;
b) constituting or that may constitute a danger to the environment *on which human life depends*; or
c) constituting or that may constitute a danger in Canada to human life or health.
(Benidickson, 1995).

All three of the conditions in this definition imply to some degree, that present human life is not the only issue of concern. If a toxic substance has 'long-term' effect, the present generation may not be the only recipients of the determined effect. Also, if a toxic substance poses a 'danger' to some of the environmental assets to which human life depends on, it may pose a danger to those people yet to exist.

The Canadian government has also constructed what is called the PSL (or the

Priority Substances List). which identifies and monitors the production and use of toxic substances. Companies and corporations are required to submit all of the information that they have for any particular toxic substance or potentially toxic substance, and where there is a substance being manufactured or produced by a corporation which has not been identified, the corporation must have that substance assessed along with its potential effects on the environment. Even though corporations have a responsibility to follow environmental regulations they do not have a direct responsibility towards future generations, they are not obligated to protect the needs of future generations. Until the burden of proof is reversed (and placed on corporations), the needs of future generations will not receive appropriate consideration. Despite the fact that corporations do not truly take into account the needs of future generations, it is evident that government regulations do consider the long-term effects of toxic substances on human life, but the burden of proof needs to be reversed before future generations are truly taken into account.

How do these regulations apply to future generations? Along with emphasizing the importance of protecting the environment for future generations, the Canadian government also analyzes the potential negative effects of toxic substances and other forms of pollution. By categorizing the potential negative effects into adverse, severe, immediate, and long-term, the government is able to make decisions with regard to protective measures. In the following passage, adverse effects is defined:

"In Ontario's *Environmental Protection Act*, adverse effect is defined as one or more of impairment of the quality of the natural environment for any use that can be made of it; injury or damage to property or to plant or animal life; harm or material discomfort to any person;

an adverse effect on the health of any person; the impairment of the safety of any person; rendering any property or plant or animal life unfit for *human* use; the loss of enjoyment of normal use of property; and the interference with the normal conduct of business." (Benidickson, 15).

The potential negative effects of a toxic substance is only one way which the Canadian government demonstrates its concern for the protection of the environment and future generations. The above passage states that adverse effects involve 'rendering any property or plant or animal life unfit for human use'. Once future generations do exist, they will probably use this property in much the same way it is presently used, and the level to which they enjoy this property will be determined by our present treatment of the environment and its natural resources. Adverse effects, will have, at least, some impact on the lives of future generations.

It seems clear that Canadian law as regards to the protection of the environment expresses a concern for future generations and recognizes their status.

B. United States Law

The United States has a trust doctrine which sets forth the government's concern for future generations in terms of protecting the environment. It legally examines public lands, public resources, and other environmental concerns such as highways and public parks. Both the general purpose and the basic underlying principle of the trust doctrine express a concern for future generations:

"The cornerstone of environmental law is the assertion that all of our national natural resource treasures are *held in trust* for the full benefit, use and enjoyment of all people of the United States, not only of this generation *but of those generations yet unborn*, subject only to wise use by the current nominal titleholder. This assertion underlies every claim by

citizens to protection of the nation's resource treasures." (Yannacone et. al, 11)

"The basic principle underlying the Trust Doctrine is that: there are things which belong to no one, and the use of which is common to all." [that is all there are and ever will be]. (ibid.)

According to the trust doctrine, the present generation has obligations to future generations in terms of protecting the environment. The reason for such obligation is that all persons who are entitled to environmental rights are participants in a public trust which by definition, includes generations beyond the present. (Yannacone et al, 11). The public resources which the present generation is entitled to are resources, which so far as we can tell, future generations will need. The purpose of the trust doctrine can be interpreted as follows: in protecting the environment and its resources, we acknowledge that human life, at present and in the future, needs to be safeguarded and that all measures which can be taken, should be taken to ensure that both the present and succeeding generations have a claim on those resources.

In addition to the trust doctrine, the United States also upholds a commitment to future generations (as far as protecting the environment) in its *National Environmental Policy Act*. First introduced in 1969, the act has as its objective to acknowledge the 'needs and aspirations of future generations' as well as 'to build a sound and operable foundation of national objectives' for the protection and management of the environment. (Yannacone et al, 150). The act makes clear a concern for future generations through a legislative mandate which holds 'all agencies and Federal officials' responsible for 'the consequences of their actions on the environment' (ibid.) In considering the present actions towards the environment, it is the goal of the United States government to

maintain and protect human health and the health of the ecosystem. Congress also plays a significant role with regards to the act:

"In furtherance of this national environmental policy established by 101 (a) of the Act, Congress declared that 'it is the continuing responsibility of the Federal Government to use all practical means consistent with other considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources,' so that the United States may:

- (1) *fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;*
- (2) assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings;
- (3) attain the widest range of beneficial uses of the environment without degradation, risk of health or safety, or other undesirable and unintended consequences;
- (4) preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity and variety of individual choice;
- (5) achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life amenities; and
- (6) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources." (Yannacone et al, 151).

One should take particular notice of the aims of both the Canadian and American government towards the environment. Previously, I indicated that the Canadian government examines the effects of present action towards the environment, and it is now evident that the United States government also examines the effects, except they regard them as 'consequences' (ibid.) What should be recognized is that both effects and consequences demonstrate a legal concern for the protection of the environment, and an explicit concern for future generations in United States, although in Canadian law it is more of an implied concern.¹ Any negative effects or consequences which are caused by our present action will affect future generations. Therefore, the intent of both the *National Environmental Policy Act* and Congress is to ensure that natural resources are

¹It must be acknowledged that implied concern does not mean that future generations have legal status. Future generations at this point have no legal status.

used efficiently and that the quality of air and water is maintained so as to 'support larger populations in the future'. (Yannacone et al. 154).

C. International Policy

The protection of the environment as it appears in international legislation has made the most significant progress regarding future generations. On the international front, there is clear evidence that the needs of future generations are recognized. The only disadvantage of international legislation is that it is not actually binding. That is to say, that if one were to behave in a negative manner towards the environment (i.e. by dumping hazardous material into a river), they would not be held accountable according to international legislation. Rather they would be held accountable by the laws of their particular region. Despite this disadvantage, international environmental law has proven to be very helpful in assisting countries as far as formulating new policies, and has maintained that a concern for the future is mandatory by all participating countries in any given international agenda. In November of 1991, the Canadian Environmental Law Association submitted a plan to the House of Commons for the restructure of the Canadian Constitution. In this plan 'the guidelines put forward by the Brundtland Commission are framed as conceptual guidelines for institutions at the national level'. (*Our Common Future*, 309). From the Brundtland Report, CELA was able to extract three main concepts which pertained to constitutional reform. They were as follows:

1. 'public access to environmental justice;
2. the need for clear environmental standards; and

3. the necessity to integrate environmental and economic decision-making at the level of government at which decisions and policies are formed that impact on the environment' (ibid.)

These concepts were later integrated within CELA's proposal for constitutional reform. None of these concepts involved future generations but CELA did take from the Brundtland Commission a definition which served as the basis for constitutional reform in Canada. In their report, "*Environmental Protection in a New Constitution*", CELA noted that Canada has 'embraced the report of the Brundtland Commission'. (*Environmental Protection in a New Constitution*, June 1991, 5). Within the report issued by CELA, 'progress' was defined in terms of recognizing the environmental rights of Canadian citizens as well as recognizing that certain activities would have an effect on the health of Canadians, including people of the future.

Aside from the advancements made in Canadian law which were made available by the concepts first introduced in international law, there have been some interesting principles put forward which deal with the protection of the environment and future generations (or future persons). The first of these principles was the Stockholm Declaration of 1972 which stated:

"man has the fundamental right to freedom, equality, and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears solemn responsibility to protect the environment for present and future generations." (*Declaration of the United Nations Conference on the Human Environment*, 16 June 1972, 11).

The right which is referred to in this declaration demands that its holder recognize the well-being of others, and that those others include future generations, (or future persons). Even though this right is to be held by members of the present generation, it does not

exclude future generations from a suitable level of environmental quality. In other words, it applies to the present generation, but its function is for both present and future human beings.

Up to this point, I have tried to show that the principle of protection is a principle that embraces the needs of future generations in addition to protecting the environment for the present generation. Natural resources, and the quality of air, water, and land, are main issues which this principle is applied to. The legislation introduced by governments concerning the environment holds (over and above each individual fulfilling their own needs and being responsible towards protecting the environment) that companies and corporations as well as the governments themselves are responsible for ensuring a healthy environment and are responsible for any negative effects or consequences which result from present action. The resources which are consumed by the present generation are understood to be public, in the sense that they belong to no one but are improved upon, or maintained and protected by everyone. What is public is for all citizens to enjoy or benefit from, and future generations are partly entitled to what is public, since they will be entitled to these resources when they do exist. Thus, from a legal standpoint, future generations are to be considered as part of the public which will enjoy or benefit from natural resources, hence their *future* needs deserve present recognition. Protection of the environment is only one of the concepts underlying environmental law. More recently, the concept of sustainable development has been introduced and debated and has become a subject of international concern. I turn now to it.

2. Sustainable Development

A. Canadian Law

Sustainable development has been analyzed from an economic, political, and philosophical perspective, though both its legal definition and status are subject to debate. Sustainable development as a principle in environmental law also addresses the needs of future generations. In Canada, the principle of sustainable development is only beginning to emerge. For the most part, every mention of future generations in Canadian law seems to be linked to the Brundtland Commission. The *Auditor General Act* (1985) states that sustainability is 'a continually evolving concept based on the integration of social, economic and environmental concerns'. (Auditor General Act, R.S.C. c. A-17). The Act proposes a list of factors that will contribute to sustainable development. Among the list, pollution prevention, protection of the health of ecosystems, and for our purpose, respecting the needs of future generations are discussed. Each province of Canada has also recently began to formulate their own objectives for achieving sustainable development. British Columbia attempted to define sustainability as it relates to forestry by pointing out interests of the First Nations people, the restoration of 'damaged ecologies' and the conservation of 'biological diversity' (Benidickson, 17). In sum, Canada has not addressed sustainable development as it relates to the needs of future generations. The Canadian government has yet to give a detailed account of how sustainability can be achieved while at the same time promote the needs of future generations. As I mentioned earlier, the Canadian Government and various environmental

agencies have predominantly relied on the Brundtland Commission as far as defining and providing for the needs of the future generations.

B. United States Law

Sustainable development as it appears in United States law is also only beginning to surface as an issue of concern. The difference between Canadian and United States law as far as the environment is concerned is that the United States have made more of an attempt (perhaps, the biggest attempt, as I see it) to balance economics with sustainable development. Within the last few years, there has been a strand of literature on sustainable development linking it with economic concepts such as 'optimality', and 'cost-benefit analysis'. (VanDeVeer et al, 310). In the United States, the concept of sustainable development as it stands now does not clearly provide for the balance between economics and a concern for the environment. In the United States, environmentalists are often in opposition to the economic strategies of the public and private sector. Environmental groups often criticize the objectives of major corporations with regards to profit maximization because of the lack of concern for the environment. So what happens as a result? The concern for the future gets overshadowed. If economics is more heavily weighted, in terms of sustainable development, (which I think is the case in the United States), then the concern for the environment and the concern for future generations is put aside. Some argue that 'the environmentalist's principal opponent in policy debates is the economist'. (Goodin, 457).

It appears that the concept of sustainable development is not suited to deal with both hard economics and hard concern for the environment. One of these will ultimately fall victim to the other, and it seems like economics in the United States has proven to have the upper hand. The economist views the concern for the future in terms of discounting costs and benefits. Economists employ the notion of discounting future interests in order to develop policies that deal with the environment. The problem with discounting the interests of future generations is that it slowly drifts away from the concept of sustainability. If economists believe that they can assign a monetary value to the lives of present and future persons, then the what lies at the core of sustainability as a concept or value is lost. If sustainability is understood as a strategy which 'aims to promote harmony among human beings and between humanity and nature', then some may argue that value to human life is inappropriate and should not be assigned. (*Our Common Future*, 65). The legal status of future generations in U.S. law with regards to sustainable development has yet to be established. It is my belief that the concept itself is still in its beginning stages, although continuous efforts by economists will not help promote a concern for the environment, much less promote the needs of future generations. Even though it is apparent that future generations hold some degree of legal status within the legislation dealing with the protection of the environment, there has been little attempt by the United States government to include future generations within their strategy for sustainable development.

C. International Policy

The most widely recognized version of sustainable development was offered by the World Commission on Environment and Development (WCED) in 1987. In *Our Common Future*, the commission defines sustainable development as follows:

"Humanity has the ability to make development sustainable—to ensure that it meets the needs of the present without compromising the ability of future generations to meet their own needs." (Our Common Future, 8).

It goes on to say that sustainable development is a 'process of change in which the exploitation of resources, the direction of investments, the orientation of technological development, and institutional change are *made consistent with future as well as present needs*.' (*Our Common Future*, 9). The principle is quite complex because it attempts to deal with a host of environmental issues ranging from population to food supply to species and ecosystems, and to the economic challenges of balancing environmental needs with the interests of industry and government. The commission called for a re-evaluation of what it means to invest in the future while at the same time promoting the needs of the present generation. Sustainable development is also meant to deal with problems which are indirectly related to the environment.

According to the WCED, two key concepts needed to be followed in order to achieve sustainable development. The first dealt with needs of the present generation as far as economics were concerned. It was the aim of the WCED to promote the needs of the poor and to consider this issue as a priority which deserved immediate attention. The second concept which needed to be followed dealt with equal distribution of the needs

(pertaining to the environment) between present and future generations. The commission determined that a 'concern for the social equity between generations' was needed for sustainable development, and that this required a meeting of 'the basic needs of all and extending to all the opportunity to satisfy their aspirations for a better life'. (*Our Common Future*, 44). Throughout the commissions' report, future generations are consistently referred to as subjects deserving of consideration. Consider their analysis of non-renewable resources:

"As for non-renewable resources, like fossil fuels and minerals, their use *reduces the stock available for future generations*. But this does not mean that such resources should not be used. In general, the rate of depletion should take into account the *criticality* of that resource, the availability of technologies for minimizing depletion, and the likelihood of substitutes being available. Thus the land should not be degraded beyond reasonable recovery. " (*Our Common Future*, 46).

Again, the concern for future generations is clear in this statement. Rather than comment on the possible effects or consequences of present action towards the environment, the WCED recognizes that resources should be evaluated in terms of their 'criticality', meaning that where there is a possibility that a particular resource or piece of land is at risk, (in terms of its availability for present and future generations) that it should be examined appropriately. (ibid.) What this amounts to is that the decision-making or policy implementation strategies must be challenged and ultimately changed in order to meet the concerns of the present generation and any succeeding generations. It is the view of the WCED that changing the decision-making process on a global level will increase the chances of meeting a sustainable level of development.

"Sustainability requires the enforcement of wider responsibilities for the impacts of decisions. This requires changes in the legal and institutional frameworks that will enforce the common

interest. Some necessary changes in the legal framework start from the proposition that an environment adequate for *health and well-being is essential for all human beings—including future generations.*" (Our Common Future 63).

Sustainable development requires public participation in decision-making and policy implementation. The WCED states that 'greater public participation in the decisions that affect the environment' will ensure that the needs of present and future generations are met. (ibid.) Without the active participation of the members of a community, sustainability is less likely to be achieved, according to the WCED. The WCED also stresses that a 'common interest' with regards to the environment is meant to include future generations. The idea of interests being common among generations is, perhaps, best exemplified in terms of intergenerational equity which is also part of the strategy of the WCED in *Our Common Future*.

One of the aims of sustainable development under the direction of the WCED is to allow for 'intergenerational equity'. The term surfaces in a variety of legal journals and deals with the distribution of interests among generations. The equal distribution of interests may be achieved through a balance of public participation and state cooperation as far shifting attitudes to include future generations within environmental decision-making. However, there seems to be more responsibility placed on the state as far as ensuring that intergenerational equity is achieved. The summary of proposed legal principles for environmental protection and sustainable development included in *Our Common Future*, notes that intergenerational equity requires states to 'conserve and use the environment and natural resources for the benefit of present and future generations'.

(*Our Common Future*, 348). Intergenerational equity has also been pursued outside of the WCED. In *Our Rights and Obligations to Future Generations for the Environment*, Edith Brown Weiss examines intergenerational equity. She writes:

"The theory of intergenerational equity finds deep roots in international law. The Preamble to the Universal Declaration of Human Rights begins, 'Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world'. The reference to all members of the human family has a temporal dimension, *which brings all generations within its scope. The reference to equal and inalienable rights affirms the basic equality of these generations in the human family.*" (American Journal of International Law, vol. 84, 1990, 200).

Weiss goes on to propose three basic principles of intergenerational equity. The first deals with conserving the natural environment 'so that it does not unduly restrict the options available to future generations in solving their problems and satisfying their own values', what she calls the 'conservation of options'. (Weiss, 202). The second principle requires each generation to 'maintain the quality of the planet so that it is passed on in no worse condition than that in which it was received', what she calls the 'conservation of quality', and the third principle stresses the 'equitable rights of access to the legacy of past generations' for the present generation and to 'conserve this access for future generations', what she calls 'conservation of access'. (ibid.) All three of these principles promote sustainability in that they advocate a concern for future generations and the interests that future generations will have in terms of natural resources, as well as a concern for the present condition of the environment.

The concept of intergenerational equity seems clearly to favour the legal consideration of the needs of future generations yet there remain some theoretical

problems with sustainable development as a legal principle. Both the definition and application of sustainable development continue to be challenged in the academic arena. The interpretation set forth by the WCED on sustainable development has been subjected to criticism on the grounds that it lacks 'clear guidance' in terms of the responsibility that the present generation has towards future generations. (Beckerman, 464). Wilfred Beckerman's article *Sustainable Development: Is it a Useful Concept?* examines some of the problems associated with the definition and application of sustainable development. Beckerman cites references to sustainable development from the Brundtland Report (WCED) which I have discussed here, as well as the United Nations Conference on Environment and Development (UNCED). He claims that the 'criterion' presented in the Brundtland Report is 'totally useless' because the needs (of future generations) is a 'subjective concept', therefore any obligation(s) that the present generation might have towards future generations remains unclear. (Beckerman, 464).

There is a problem as far as guiding the present generation so that sustainable development may be achieved, but I disagree with Beckerman on his idea that the needs of future generations is a subjective concept. Even if the needs of future generations are too difficult to agree upon, it is reasonable to assume that future generations will require basic needs for survival, (such as air, water, and land), as I attempted to show in the first chapter. The issue of future generations are not entirely subjective. There are basic needs for human survival which cannot be debated and these needs are the types of needs which sustainable development, (as offered by the WCED) is referring to.

Beckerman uses the example of conserving resources to show that the needs of future generations deserve less consideration. He criticizes the Brundtland Report's interpretation of conservation on the grounds that it is 'morally repugnant' (Beckerman, 464). Beckerman writes:

"Given the acute poverty and environmental degradation in which a large part of the world's population live, one could not justify using up resources in an attempt to preserve from extinction, say, every one of the several million species of beetles that exist. For the cost of such a task would be partly, if not wholly, resources that could otherwise have been devoted to more urgent environmental concerns, such as increasing access to clean drinking water or sanitation in the Third World." (ibid.)

According to Beckerman, it does not make much sense to conserve resources for future generations when those resources could be used for more 'urgent environmental concerns'. (ibid.) However, the intent of the WCED was to recognize that needs of present and future generations are linked rather than deserving of immediate priority. The WCED noted that actions must be taken 'to reduce risks to survival and to put future development on paths that are sustainable' (*Our Common Future*, 22). The WCED also acknowledged the overuse of environmental resources which affect the survival of the present generation. It seems that Beckerman's interpretation of sustainable development is focussed on the consideration given to future generations, rather than the plans made by the WCED to account for the needs of human survival across generations. The WCED advocates conservation as a key to sustainable development and considers conservation of resources a 'critical task'. (*Our Common Future*, 59). I agree with Beckerman that resources should be used to deal with more urgent matters, but sustainable development as a concept involves taking into account the needs and interests of all humanity and other

life forms, as well as future generations, (where it is possible). The needs of future generations may not be on par with the needs of the present generation, but there is no reason to put aside those needs altogether, to deal with environmental problems of the day. The Brundtland Report points out that acknowledging the needs of future generations is an environmental priority. The needs of future generations may in fact be urgent if there is reason to believe that the quality of life will be affected by our present action, if the air which they need is affected or impaired by present action. If there is priority given to the present generation, as far as environmental resources are concerned, then this does entail that future generations should be given considerably less concern. The principles of environmental law promote the legal protection of the environment and a sustainable level of development, and the priority that is given to environmental matters is based on the determined effects that those matters will have on the life systems within that environment, rather than the priority that the present generation has over future generations.

Beckerman also criticizes the interpretation of sustainable development offered by the United Nations Conference on Environment and Development (UNCED). The conference produced a significant document entitled *Agenda 21*. Within this agenda the countries participating in the conference set out their 'agreed intentions' to 'take account of environmental objectives in their domestic policies, to monitor their own developments' from a sustainable perspective. (Beckerman, 463). A great portion of the agenda made reference to sustainable development and the needs of future generations. However, the lack of clarity with respect to its language prompted Beckerman's criticism. Beckerman

claims that the 'socially responsible goals' to which the agenda refers are not clear and that the limits on protecting resources for future generations are undefined. He writes:

"But what are socially responsible goals in this area, how far should we protect the resource base, whatever that means, and what are the legitimate interests of future generations that have to be protected?" (ibid.)

The undefined terminology apparent in the agenda poses a serious problem as far as achieving sustainable development. The reason for this is that the terms which are key to the concept of sustainable development, when closely examined, do not provide the proper guidance to the present generation as far as what actions will allow or will not allow for sustainability to be achieved. Beckerman's criticism of socially responsible goals is important because these are the types of elements which require clear definition, since they lie at the core of sustainable development. Beckerman cites Harvey Brooks to support his position. Brooks claims that in order for the concept of sustainability 'to be operationally useful it must be more than just an expression of social values or political preferences disguised in scientific language'. (Beckerman, 463).

The language in both the Brundtland Report and Agenda 21 does seem to be primarily 'scientific' as is the case with many other local and international agreements on sustainable development. Both the needs of the present generation and the needs of future generations will, at some point, require clear definitions if we are to achieve sustainable development. However, rather than call the needs of future generations subjective as Beckerman has claimed, I would prefer to view the needs of future generations as yet to be defined appropriately or as presently undetermined, since there is sufficient justification

indicating that the needs of future generations can be linked to the needs of the present generation. The lack of clarity in the Brundtland Report and Agenda 21 is not the only problem. The term 'future generations' has also been left undefined, the term is central to progress in this area. Though some philosophers have attempted to give definitions of future generations, there has been little effort to define future generations from a legal perspective and to clarify the definition in legislation or international agreements such as those discussed here. Laura Westra claims that the 'meaning of needs is certainly ambiguous' as it has been applied in international and national legislation. She goes on to say that both 'future generations' and the 'environment' are 'left undefined'. (Westra, 185). Her position is that the lack of clarity and the key terms that are left undefined will have implications on the progress which is made as far as achieving sustainability. She refers to these problems as 'imprecisions' which will continue to stand in the way of environmental progress until they are dealt with accordingly. (ibid.) These problems with the key terminology must be given appropriate attention if we are to succeed in improving the condition of the environment.

Achieving sustainable development will continue to be slowed down until there is more understanding as to how the key terminology contributes to its goals. It is true that future generations are legally in the most widely recognized international legislation and legal agreements dealing with sustainable development, but it is also true that careful analysis of the key terminology has not been conducted to any significant degree.

Sustainability 'requires the enforcement of wider responsibilities for the impacts of decisions' and requires 'changes in the legal framework' that will allow for adequate 'health and well being' of both the present generation and future generations, but the terminology used must also be clear before any initiatives are taken. (*Our Common Future*, 3). The reasons for this are obvious. Without general agreement on how terms such as 'needs' contribute to sustainability, or on how 'social goals' relate to the present generation and future generations, there will be less chance for 'harmony among human beings and between humanity and nature', which is the aim of sustainable development, according to the WCED. (*Our Common Future*, 65).

3. Concluding Reflections

The purpose of this chapter was to discuss the legal recognition given to future generations in environmental legislation and policy. I chose only to refer to two key concepts of environmental law and to analyze these concepts as they appear in Canadian law, United States law, and international legislation. On all three fronts, it turns out that future generations are legally considered, even though there are problems in terms of defining the relation between future generations and the goals of sustainable development. At the beginning of the chapter, I made it clear that future generations and future persons are similar in terms of their interpretation as it relates to environmental law. The primary objective was to look closely at environmental law and to determine the extent to which future generations are legally considered; the extent to which they could

be said to hold a legal status. My initial view was that future generations (or future persons) are already included within the concepts and that legal consideration was clearly evident. At this point, I believe it is safe to assume that future generations (or future persons) are not only considered but are emerging as part of the framework that constitutes environmental legislation and policy. The *health* of human beings which lies at the core of environmental policy and which most of the policies make reference to is meant to apply to both present generation as well as future generations and the life systems needed to support those generations. Under Canadian, U.S., and international law, there is no evidence which would indicate a dismissal of consideration towards future generations.

What may be concluded about the status of future persons from the concept of protection of the environment and the concept of sustainable development in terms of future generations? Even though there is legal concern for future generations on both a national and international level, there remains questions as to the degree of concern, or the extent to which the present generation should protect the environment. There is also confusion as to who is responsible for protecting the environment or how such responsibility is to be divided up among government and the public. Lastly, there are problems with clarity in some of the legal definitions as is the case with sustainable development. These problems will need to be addressed at some point if there is to be significant environmental progress with regards to respecting the needs (air, water, and land) of future generations.

Despite these theoretical problems, it is safe to assume that concern for future generations is growing, that policy-makers are becoming more concerned with the needs of future generations, or at least addressing some of these needs in the legal arena more than they have before the last few decades. In the next chapter, I will tie together the concepts discussed in this chapter with the idea that future generations (or future persons) deserve a moral status. The recognition that given to future generations in policy and the moral status which should be given to future generations together allow for a line of reasoning that may support a more official form of representation for the needs of future persons. In the last chapter, I argue that the present generation has an obligation to consider the needs of future persons and that this obligation is grounded in both moral and legal reasoning.

Chapter Three

Representing the Needs of Future Persons

In this chapter I explore the notion of moral status for future persons. I am prepared argue that future persons deserve to have their needs taken into account based on the consideration given to them in moral philosophy and the recognition they are given in environmental legislation. In constructing this argument, I consult Ernest Partridge, Galen Pletcher, and Christopher Stone.

In his book, *"Earth and Other Ethics"*, Christopher Stone poses the question: "What are the things we ought to care about and respect, and in what ways should that attitude be manifested?" (Stone, 41). The purpose here is precisely to stress that the 'attitude' towards future persons may be 'manifested' through the realization that moral and legal reasoning taken together suggest a prudential view that future persons deserve a more official form of representation. I draw together the argument from Chapter One and Chapter Two in the following way: If we accept that future persons have moral status and that they are recognized in environmental policy and legislation, then we have a strong argument for taking their needs into account. Stone claims that 'our two principal institutions for sorting out and implementing these concerns' are 'morals and law'. (ibid.) I want to say that both morals and law taken together provide a compelling argument for the view that it is prudent to take the needs of future persons into account.

I begin by further analyzing the criteria for moral consideration. I examine

Partridge's notion of self-transcendence and its relation to our moral capacity to consider the needs of future persons. I argue that moral agents can attribute value to the needs of future persons. I then examine Pletcher's account of the function of obligations and relate it to the notion that moral agents can choose to view future needs as deserving of present consideration, that any obligations to future persons can be viewed as self-imposed. I also discuss the notion of respecting the needs of future persons and its relation to Pletcher's argument. In the second part of this chapter, I examine Stone's position that future persons have legal standing and draw a comparison with Stone's analysis of nonpersons. The last part of this chapter stresses the importance of valuing and respecting the needs of future persons; that value and respect are products of moral and legal reasoning and that both of these lines of reasoning working together support the prudential view that future persons deserve moral status.

1. Partridge's position

Ernest Partridge puts forth an interesting concept dealing with the consideration of others. In his article, "*Why Care About the Future*", Partridge introduces the 'concept of self-transcendence'. This concept follows from the basic analogy that no man is entirely individual in terms of his needs, and especially in terms of his needs for survival. All men depend on others to some degree as far as their needs are concerned. The idea of self-transcendence is characteristic of man within society, man within the context of social

experience. Partridge argues that 'to be human is to relate out, to identify with others, and to show concern' for those who either are in a position relative to ours, *or who will be in a position relative to ours*. (Partridge, 207). To consider the interests of future persons is to extend concern further than it has to be extended, to exceed what is commonly expected of us as rights-holders. Thus, to transcend is to assign value to something other than the self. One might argue that concern for future persons involves assigning value to their needs. Partridge claims that self-transcendence 'describes a class of feelings that give rise to a variety of activities'. He goes on to say that the 'motive' for self-transcendence is 'for the self to be a part of, to favorably effect, and to value for itself the *well-being and endurance of something that is not oneself*'. (Partridge, 204).

When we consider the needs of future persons we attribute value to those needs. We do not attribute value to future persons because they do not exist; what is given value is the needs that future persons *will* have. One of the reasons (or 'motives' as Partridge would say) for assigning value to those needs is because we believe that they will be very similar to our own. If future persons could be said to have moral status it may be because we value their future needs. For the most part, consideration is what follows from the value that future needs have at present. Any obligations or responsibility also follow from the value we assign to the needs of future persons. In choosing to provide for their clean air, I value their needs, and I impose some type of responsibility upon myself to ensure that that need (for clean air) is met, in as much as I could provide for that need. Such

responsibility can be interpreted as one of the 'activities' that arise from our awareness of the needs of future persons. What determines the moral status of future persons is then the degree to which we value their needs at present. We are in a position to concern ourselves with the needs of future persons and our awareness of those needs prompts us to act so as to ensure that those needs are met.

The notion of self-transcendence involves assigning value to future needs.

Partridge argues that 'those who feel and manifest' and concern for future needs 'display psychological health and well-being' (Partridge, 2006). I want to add that those who feel concerned for future needs also exhibit their moral capacity to care for others, even if those others have yet to exist. The fact is we have a moral capacity which reaches beyond the present. One of the ways we utilize this capacity is by assigning value to future needs and by taking steps to ensure that those needs are met. If I believe that I will one day have children and that those children will have certain needs, it makes sense to say that I am in a position to affect those needs. Hence the needs of my future children are within the scope of my moral capacity. I can choose now to provide for those needs and not to interfere with their access to those needs. Now analogously, just as I feel responsible towards my future children I might also feel responsible towards people of the future in general. I don't know when these people will exist, who they will be, or how many there will be, but I believe that they will have needs that I presently have and that some of those needs pertain to survival. The responsibility to provide for the needs of future persons arises

from my awareness of the relation between present and future needs.

Galen Pletcher gives an example which serves to clarify the type of responsibility we might be said to have towards future persons.

2. Pletcher's position

In Pletcher's analysis of the function of rights, we find additional support for the idea that it is prudent to take the needs of future persons into account and that moral agents could be said to have a responsibility towards future persons. Pletcher's argument is important because it establishes that moral agents should respect the needs of future persons. He writes:

"...if I have been camping at a site for several days, it is common to say that I have an obligation to clean up the site—to leave it at least as clean as I found it—for the next person who camps there. We assume, of course, that the person who will use it next does exist somewhere; but it is not necessary to know who will use it to assume this, just as it is not necessary to know who he or she is or when he or she will use the site. We have an obligation that might be called an 'obligation-function', because it is to some as yet unspecified person or persons. *There is a preliminary 'right-function' in this case*, which can be stated: 'For any *X*, if *X* is a person who wants to camp at this site, then *X* has a right to a clean campsite'." (Pletcher, 168).

Pletcher maintains that future persons fall into a category where their needs establish their eligibility for rights. Though I do not agree with his argument entirely, he does put forth a position that is plausible because it stresses the function rather than the application of rights. Rights do not apply to future persons now but future persons will have rights, and Pletcher wants to say that we should be responsive to those needs; that it is moral to respect their needs at present. Through careful analysis of the function of rights, he wants

to conclude that future persons have rights. He argues that the function of rights allows for future persons to be eligible for present rights. As I indicated earlier, this type of position is difficult to defend because it relies on the notion 'to have' which future persons do not qualify for. However, Pletcher is successful, in my view, as far as establishing that future persons and their needs deserve consideration; a more official form of consideration.

Also, Pletcher can be equally credited for his argument that present persons have 'general' rather than specific obligations towards future persons. He writes:

"Difficulties with the concept of the rights of future generations derive from focusing on such moral obligations as promises, borrowings, and spoken contracts, instead of more general obligations that must be stated with no *particular* person in mind. If I am correct in thinking this, namely, that there are rights of the form 'for any *X*, if *X* has *Q*, then *X* has *R*' (where *Q* is a set of circumstances and *R* is a right), then these right-functions must range over all people at all times, even to those who are not yet born. If, happily, I have discovered a campsite so removed from the beaten track that the next person to discover it is someone who wasn't even alive when I last camped there, it still is true of that lucky person that he has a right to a clean campsite, and I had an obligation to secure to him that state of affairs." (ibid.)

Pletcher uses both moral and a legal approach to conclude that the function of rights could be interpreted as, in principle, relating to future persons. Pletcher regards future persons as 'special cases' to whom we might have obligations, and to whom we might be better off viewing as holding present rights. What I suggest is not that future persons hold rights but that it is better to view their needs as qualifying them for a moral status. The camper, in Pletcher's example, ultimately chooses to leave a clean campsite for the next person. He chooses to leave a clean campsite because he realizes that some person at some point in the future may also want to use that same campsite. The obligations we have to future

persons are similar to the obligations that the camper has to future campers. However, the camper imposes such obligation on himself because he believes some person(s) will occupy the same campsite in the future. Hence the obligation that the camper has is conditional because it depends on the degree to which we see ourselves in relation to those yet to exist, (just as the camper sees himself in relation to the person(s) who will want to have a clean campsite).

Up to this point, I have argued that the needs of future persons have present value and that those needs can be respected by utilizing our moral capacity. Christopher Stone argues that future persons have a legal standing, that their needs are legally recognized. In the last chapter, I argued that environmental legislation serves to represent the needs of future persons. It does not, as I have said repeatedly, grant legal rights, nor legal status to future persons, but future persons (and their needs) are recognized in the key concepts of environmental legislation. Stone's argument focuses on the recognition given to nonpersons (referring to rivers, lakes, dogs, and so on), but we will see that it can also apply to future persons.

3. Christopher Stone's position

Stone argues that nonpersons are legally recognized. I argued a similar point in the previous chapter. Stone emphasizes that nonpersons need not hold legal rights in order to deserve consideration and that there is justification for saying we have an obligation towards nonpersons. He writes:

"When the law criminalizes dog beating it *institutionalizes concern* for dogs. It does so,

however, by creating a prospective liability for the dog beater, who is made answerable to public prosecutors at their discretion. In no accepted sense does such a statute create a 'right' in the dog. The same principle is at work in legislation establishing animal sanctuaries, and laws that compel cattle transporters to provide minimally 'humane' standards at the risk of losing their certificate. *The law is enlisted in an effort to protect Nonpersons, but the legal rights are not required.* The federal government recently issued regulations requiring fishermen who accidentally land sea turtles on their decks to give them artificial respiration. The technique is set out in detail. But the term *turtle's rights* is never mentioned. Nor need it be." (Stone, 44).

The legal recognition that is given to future persons is of a similar sort, though it does not enlist obligations punishable by law. Every other principle that Stone refers to in this passage is equivalent of the legal recognition that is given to future persons. The 'standards' that regulate the protection of the environment apply to future persons; there is institutionalized concern for future persons under the law; there is also legislation which serves to protect humanity, future persons included; and lastly, there is duties expected of the present generation for the purpose of representing the needs of future persons.

According to this interpretation, I think it makes sense to perceive future persons as deserving of moral status. There need not be an actual right designated to future persons, but there may be a view which promotes the needs of future persons by linking those needs with the needs of present moral agents, by viewing the needs of future persons as morally significant and as deserving of moral status. If I choose to recognize future persons to a greater extent, it is because I believe that their lives depend, at least in part, on what I do now, on the attitude which I take now, and ultimately on the degree to which I see myself related to them and their future needs. The view that it is prudent to grant future persons a moral status results from this introspection that I have undergone with the

help of moral reasoning and the sort of legal recognition that Stone refers to. I see moral reasoning and the legal recognition of future persons as linked because they both stress the notion of valuing and respecting the needs of future persons. Why then is it *prudent* to view future persons as deserving of moral status?

A prudential view is a recommendation which emphasizes some type of attitude towards a particular situation or circumstance. If I say that it is better to take road A to reach destination X, it is because I have some type of knowledge which I feel may assist others in deciding which road they should take. My investigation of both the moral consideration and the legal recognition given to future persons instructs me to advocate a particular attitude towards future persons. At this point I have argued that moral philosophy should extend consideration to future persons even though it does not concede that future persons have rights. Environmental policy does give active consideration to future persons. If we were to combine the moral consideration and legislative policy recognition given to future persons, what are the results? A prudential view arises: that future persons should be regarded as having moral status. What does this position imply? It implies a self-imposed obligation to value and respect the needs of future persons. Ultimately, we make the choice to value and respect their needs. If future persons were in a position where they could claim their needs for survival, they would probably demand, at least, that we protect the condition of the environment so that it would support their needs for survival. Since they are not in a position where they could

demand respect, it is up to the present generation to decide whether or not to respect the needs of future persons, specifically those which will determine their survival and their quality of life. The fact is we are in a position to affect the welfare of future persons and we can choose to value and respect their needs. What justifies this value and respect for their needs is an appeal to morality and law. As long as we agree that future persons will have needs that can be valued and respected, it seems prudent to take those needs into account. Thus, it is reasonable for the present generation to adopt an attitude that advocates the moral status of future persons because such an attitude is grounded in basic principles of morality (such as respecting and valuing the needs of others), as well as the basic concepts in environmental legislation (such as protecting the environment and sustainable development).

If I am correct in assuming that a moral status should be extended to future persons, then it seems rational to say that part of what it means to recognize status is to take into account the needs of future persons, when we are discussing the environment. The present generation should take steps to *represent* the needs of future persons because both morality and law suggest that those needs should be represented. The needs of future persons do not fall outside of our moral sense. We have the capacity to concern ourselves with the condition of the environment as well as the ability to protect that environment for future persons. This line of reasoning is what leads to the prudential view that future persons deserve moral status. Granting a moral status to future persons is

prudent in light of the moral consideration and legal recognition given to them. It would make official the representation of their needs.

All will agree that we should concern ourselves with the condition of the environment and our access to certain needs, but I have argued that as moral agents we have it within us to *feel* concern for the well-being of human life: present and future. We have what may be called a 'representative feature' to our character. That is to say, there is something about us that urges us to have concern for the needs of others. As moral agents we can choose to represent the needs of future persons or we can choose not to. If it makes sense to say that one can care for the needs of his successors, then it seems equally sensible to say that he can 'manifest' his attitude by appealing to 'morals and law' which, as I have stressed, support a concern for future persons. (Stone, 41). Hence, an appeal to morality and law (as far as the needs of future persons in relation to the environment) suggests that it is prudent to view future persons as deserving of moral status.

The representative feature of our character which I refer to, is I think, inherent within all moral agents. Not everybody feels concern for the future, but they can understand why future needs are morally significant. I would like to think that we all have the capacity to value and respect the needs of other persons, even if those persons have yet to exist. We have the capacity to value and respect the needs of future persons, just as the camper in Pletcher's example values and respects the needs of the next person to

occupy his campsite. To represent the needs of future campers is to leave a clean campsite much in the same way that representing the needs of future persons is to leave a clean environment so that they are able to meet their needs for survival. Only some of us will choose to represent future needs, though, perhaps, all of us should choose to represent them. Of those who choose to represent the needs of future persons, I want to say that some of them will make that choice on moral or legal grounds, or as I advocate, on both of them combined. The combination of moral and legal thought regarding the needs of future persons is, what I believe, sufficient justification for the prudential view that future persons deserve moral status.

4. Conclusion

The intent of this chapter was to argue that there is a clear prudential argument for the claim that future persons deserve moral status. I have emphasized the notion of valuing and respecting the needs of future persons; that both value and respect for future needs is a choice and that both are indicative of full moral agency. I tried to establish that moral agents have it within their power to represent the needs of future persons, and that the grounding for such representation could be found in morality and law. If there are reasons for believing we *should* represent the needs of future persons within moral discourse (and that we should take steps to ensure that those needs can be met by future persons) then there is, as I see it, justification for the claim that it is prudent to take the needs of future persons into account, to assign future persons a moral status at present, or

at least, to allow for the belief that future persons should have a moral status.

CONCLUSION

In this thesis, I examined the issue of future persons in relation to the environment. I reviewed the philosophical literature having to do with future persons (and future generations), and developed a case for the moral status of future persons in discussions of the environment. I maintained that moral discussions should include future persons, even though future persons do not exist and that they have no identity at present. I argued that future persons should be given a status in environmental discussions because their needs will be common to ours and because our present action will have a direct effect on their lives, (on the air, water and land that they will need to survive). I also reviewed environmental legislation in three different constituencies: Canadian law, United States law, and international legislation. My intent was determine the extent to which future persons as they might relate to the environment are treated in the legal literature. I reviewed two of the main concepts in environmental legislation: protection of the environment and sustainable development. I discovered that Canadian law, United States law, and international legislation all stand to promote the needs of the humanity; past, present and future, and thereby recognize future persons as having legal standing. The last chapter was an attempt to bring together the moral consideration given to future persons with the legal recognition that future persons already receive. The two perspectives taken together were used to pursue a prudential argument that future persons deserve moral status.

It follows that it is better to value and respect the needs of future persons, to acknowledge their future needs and to represent their needs when we discuss present environmental initiatives.

I believe that the needs of future persons can be addressed in our environmental policies and that we should, as moral agents, take those needs into account. The efforts made to represent the needs of future persons are indicative of full moral agency and characteristic of the conscious rights-holder. To extend consideration to others (including those yet to exist), is not something we have to do, it is something we choose to do. There are principles in moral philosophy that suggest we *should* consider the needs of future persons and there are legal concepts that say we *must* consider those needs but ultimately, we have to decide for ourselves why we stand in relation to people of the future, why it is necessary to care for those people. My hope is that this thesis will assist in those types of decisions, by providing a line of reasoning that shows why future persons have moral status now.

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VITA AUCTORIS

Anthony Italo Fabiano was born on June 18, 1973 in Sault Ste. Marie, Ontario. He entered undergraduate studies at Algoma University (Sault Ste. Marie) in September 1992. He studied Political Science and Law and Justice. In 1994, he moved to Windsor, Ontario to complete his Bachelor of Arts degree in Political Science and graduated from the University of Windsor in 1996. He continued his studies at the University of Windsor and graduated with an Honours degree in Philosophy in 1998. A keen interest in legal theory and environmental ethics inspired him to pursue a Master of Arts degree in Philosophy. He plans to attend law school upon the completion of graduate studies.